Supreme Court U.S.
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No. 06- 06-173

IN THE

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

ISSUE 1: Where the United States as trustee for the San Carlos Apache Tribe, and the Apache Tribe on its own behalf, were required by this Court to adjudicate all the Tribe's federal reserved, aboriginal and other water rights in Arizona's general stream adjudication under the McCarran Amendment, 43 U.S.C. § 666, and where opposing claimants in the general stream adjudication raised the affirmative defense of *res judicata* in motions for summary judgment arguing that a previous federal consent decree on the Gila River precluded the United States and the Tribe from adjudicating water rights to the Gila River mainstream for the Apache Reservation, did the Arizona Supreme Court err where it assumed the existence of privity and affirmed the trial court's decision on *res judicata*, concluding as a "matter of federal law" that comity compelled the Apache Tribe to present its defenses to *res judicata* in the federal district court which entered the prior consent decree?

ISSUE 2: Does it violate the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution to apply the **affirmative defense** of *res judicata* to preclude the United States as trustee for a federally recognized Indian Tribe, and the Tribe on its own behalf, from adjudicating certain federal reserved, aboriginal and other water rights in a state general stream adjudication conducted under the McCarran Amendment, without allowing the Indian Tribe to present its **defenses** to *res judicata* in the state forum in which it was raised?

PARTIES TO THE PROCEEDING

This Petition for writ of certiorari arises out of Arizona's general stream adjudication, *In re the General Stream Adjudication of All Rights to Use Water in the Gila River System and Source*, W-1, W-2, W-3, W-4 (consolidated) ("Gila River Adjudication").[1] The Gila River Adjudication involves more than 27,000 parties and over 77,000 claims. *See San Carlos Apache Tribe v. Superior Court*, 972 P.2d 179, 186 (Ariz. 1999). The United States was joined as a party pursuant to the McCarran Amendment, 43 U.S.C. § 666, for itself and as trustee for sixteen Arizona Indian Tribes, including Petitioner, the San Carlos Apache Tribe ("Apache Tribe" or "Tribe), a federally recognized Indian Tribe, recognized pursuant to the Apache Treaty, July 1, 1852, 10 Stat. 979 (App. 294a), and organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476 *et seq.*

The Respondents are those claimants in the Gila River Adjudication in the Maricopa County Superior Court who filed a notice of appearance and participated in the proceedings before the Supreme Court of Arizona from which this Petition arises, case number WC-02-0003-IR [Contested Case No. W1-206]. These Respondents are the United States of America; the State of Arizona; the Gila River Indian Community; ASARCO LLC; Phelps Dodge Incorporated; San Carlos Irrigation and Drainage District; the City of Safford; Gila Valley Irrigation District; Franklin Irrigation District; Salt River Project; City of Goodyear; and BHP Copper Incorporated.

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1. The Gila River Adjudication is the consolidated action to adjudicate *inter sese*, water rights, including federally protected Indian water rights, to the Upper Salt, Verde, Upper Gila, Lower Gila, Agua Fria, Upper Santa Cruz and San Pedro watersheds in Arizona.

Thousands of parties have filed claims in the underlying Gila River Adjudication before the Maricopa County Superior Court, but have **not** filed a notice of appearance or participated in the Interlocutory Appeal before the Arizona Supreme Court in WC-02-0003. These additional claimants are not designated Respondents to this Petition under the Rules of the Supreme Court of the United States.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceeding	ii
Table of Contents	iv
Table of Cited Authorities	vi
Table of Appendices	x
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
A. History of the Gila River Adjudication	5
B. Proceedings Below	6
C. Finality of the Decision Below	11
Reasons for Granting the Petition	16
A. The Arizona Supreme Court Has Decided an Important Question of Federal Law in Conflict with Relevant Decisions of this Court, Including *Arizona v. San Carlos* and *Winters*, and Which Defeats the Purpose of the McCarran Amendment	16

Contents

Page

1. The History of this Court's Decision in *Arizona v. San Carlos* Demonstrates that the Novel Application of Comity Called for by the Arizona Supreme Court Will Defeat the Purposes of the McCarran Amendment 17

2. The Arizona Supreme Court's Application of General Principles of Comity In This McCarran Amendment Proceeding Is the Antithesis of this Court's Rationale in *Arizona v. San Carlos* 21

B. The Question of Whether Comity May Be Used to Bar An Indian Tribe From Presenting a Defense to *Res Judicata* in a State General Stream Adjudication Is an Important Question of Law of Constitutional Magnitude Which Should be Decided by This Court 23

C. Arizona Has Broken its Promise to this Court, the United States, and the Tribes, that Indian Water Rights in Arizona Will Be Adjudicated in a Fair and Comprehensive Manner 27

Conclusion 30

TABLE OF CITED AUTHORITIES

Page

CASES

Arizona v. California, 460 U.S. 605 (1983) 24

Arizona v. California, 373 U.S. 546 (1963) 1, 4

Arizonans for Fair Representation v. Symington, 828 F. Supp. 684 (Ariz. 1992) 18

Buckley v. Valeo, 424 U.S. 1 (1976) 26

Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970) 10

Choctaw Nation v. United States, 119 U.S. 1 (1886) 10

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) 6, 16, 20

County of Oneida v. Oneida Indian Nation of N. Y., 470 U.S. 226 (1985) 10

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 11, 12, 13

Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989) 12

Flynt v. Ohio, 451 U.S. 619 (1981) 12

Goddard v. Babbitt, 536 F. Supp. 538 (Ariz. 1982) 18

Cited Authorities

Page

Hansberry v. Lee, 311 U.S. 32 (1940) 25

In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 134 P.3d 375 (2006) 2, 10, 29

In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 127 P.3d 882 (2006) 1, 10, 11, 23

Jefferson v. City of Tarrant, Alabama, 522 U.S. 75 (1997) 12

Market Street R. Co. v. Railroad Comm'n of Cal., 324 U.S. 548 (1945) 12

Mills v. Alabama, 384 U.S. 214 (1966) 12

Nevada v. United States, 463 U.S. 110 (1983) 23

Pierce County v. Guillen, 537 U.S. 129 (2003) 13

Postal Telegraph Cable Co. v. Newport, 247 U.S. 464 (1918) 25

Richards v. Jefferson County, 517 U.S. 793 (1996) 7, 25

San Carlos Apache Tribe of Arizona et al. v. State of Arizona et al., 721 F.2d 1187 (9th Cir. 1983) 5

San Carlos Apache Tribe v. Superior Court, 972 P.2d 179 (Ariz. 1999) ..... ii, 29

Cited Authorities

Page

United States v. New Mexico, 438 U.S. 696 (1978) 15

United States v. Winans, 198 U.S. 371 (1904) 1, 4

United States v. Truckee-Carson Irrigation District, 649 F.2d 1286 (9th Cir. 1981), *modified at* 666 F.2d 351 (9th Cir. 1982) 24

United States v. Gila Valley Irrigation District, 801 F. Supp. 1 (D. Ariz. 1992) 3

San Carlos Apache Tribe of Arizona v. State of Arizona, et. al., CIV 79-186 PHX-PGR 5

United States v. Gila Valley Irrigation District, 31 F.3d 1428 (9th Cir. 1994) 10

United States v. District Court for Eagle County, 401 U.S. 520 (1971) 6

Winters v. United States, 207 U.S. 564 (1908) .... *passim*

Wyoming v. United States, 488 U.S. 1040 (1989), *affirmed without opinion*, 492 U.S. 406 (1989) ... 15

Cited Authorities

Page

OTHER AUTHORITIES

18 C. Wright, A. Miller, and E. Cooper, *Federal Practice and Procedure* § 4449 (1981) 25

Globe Equity No. 59 Decree, United States District Court for the District of Arizona, June 29, 1935 ..... *passim*

Moore's Federal Practice, § 131.52 (Matthew Bender 3rd ed. 2000) 7

Restatement (Second) Judgments, § 42(1)(e) 8, 11, 23

U.S. CONSTITUTION & STATUTES

Amendment 5, United States Constitution ..... i, 24

Amendment 14, §1, United States Constitution .... i, 24

McCarran Amendment, 43 U.S.C. § 666 ..... i, ii, 4, 19

Apache Treaty, July 1, 1852, 10 Stat. 979 ii

Indian Reorganization Act of 1934, 25 U.S.C. § 476 *et seq.* ii

28 U.S.C. § 1257(a) 2, 11, 15

28 U.S.C. § 1362 5

A.R.S. § 45–252(a) 5

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The Supreme Court Of Arizona Filed February 9, 2006 ..... 1a

Appendix B — Order Of The Supreme Court Of Arizona Denying Motion For Reconsideration Filed May 3, 2006 ..... 54a

Appendix C — Order Of The Superior Court Of The State Of Arizona In And For The County Of Maricopa Dated May 17, 2002 ..... 62a

Appendix D — Amended Order Of The Superior Court Of The State Of Arizona In And For The County Of Maricopa Dated And Filed March 7, 2002 ..... 66a

Appendix E — Report Of The Special Master Of The Superior Court Of The State Of Arizona In And For The County Of Maricopa Dated June 30, 2000 ..... 108a

Appendix F — Order Of The United States District Court For The District Of Arizona Dated May 2, 1983 And Filed May 9, 1983 ..... 212a

Appendix G — Opinion Of The Supreme Court Of The United States In *Arizona, et al. v. San Carlos Apache Tribe Of Arizona, et al.* Decided July 1, 1983 ..... 221a

Appendix H — Special Procedural Order Providing For Interlocutory Appeals And Certifications Dated And Filed September 26, 1989 ..... 262a

Appendices

Page

Appendix I — Minute Entry Of The Superior Court Of Arizona, Maricopa County Dated September 11, 1998 ..... 272a

Appendix J — Minute Entry Of The Superior Court Of Arizona, Maricopa County Dated August 24, 1999 ..... 278a

Appendix K — Relevant Constitutional And Statutory Provisions 284a

Appendix L — Restatement Of The Law, Second, Judgments 289a

Appendix M — Treaty With The Apaches. July 1, 1852 ..... 294a

Appendix N — Excerpts Of Opening Brief For United States 301a

Appendix O — Order Of The United States District Court For The District Of Arizona Dated July 10, 1990 And Filed July 16, 1990 ..... 304a

Appendix P — Minute Order Of The United States District Court For The District Of Arizona Dated August 7, 1990 And Filed August 14, 1990 ..... 307a

Appendix Q — Order On Motion To Reverse Of The United States District Court For The District Of Arizona Dated October 19, 1990 And Filed October 24, 1990 ..... 308a

Appendices

Page

Appendix R — Order Of The United States District Court For The District Of Arizona Dated May 10, 1999 And Filed May 13, 1999 ..... 310a

Appendix S — Order Of The United States District Court For The District Of Arizona Denying Motion To Reconsider Dated And Filed July 16, 1990 ... 312a

Appendix T — Minute Order Of The United States District Court District Of Arizona Dated August 7, 1990 And Filed August 14, 1990 ..... 313a

Appendix U — Civil Minutes — General Of The United States District Court For The District Of Arizona Dated And Filed July 16, 1990 ..... 314a

Appendix V — Order Of The Honorable John C. Coughenour Of The United States District Court For The District Of Arizona Dated July 10, 1990 And Filed July 16, 1990 ..... 315a

Appendix W — Order On Motion To Reverse Of The United States District Court For The District Of Arizona Dated October 19, 1990 And Filed October 22, 1990 ..... 319a

Appendix X — Order Of The United States District Court District Of Arizona Dated May 10, 1999 And Filed May 13, 1999 ..... 321a

Appendix Y — Excerpt From Statement Of Position Of Arizona In The Supreme Court Of The United States 323a

Petitioner, the San Carlos Apache Tribe, respectfully requests that this Court grant its Petition and issue a writ of certiorari to review the decision of the Arizona Supreme Court entered on February 6, 2006, and the Order Denying Motion for Reconsideration entered on May 3, 2006 (collectively the "decision below"), where the Arizona Supreme Court conclusively ruled that the United States as trustee for the Apache Tribe, and the Tribe on its own behalf, are precluded under the doctrine of *res judicata* from adjudicating the Tribe's federal reserved, aboriginal, and other water rights claims to the mainstream of the Gila River in the Gila River Adjudication,[2] and further, that the Apache Tribe is barred by general principles of comity from presenting its defenses to *res judicata* in the Gila River Adjudication, the forum in which the **affirmative defense** of *res judicata* was originally raised.

OPINIONS BELOW

The original Opinion and Order of the Arizona Supreme Court (App. 1a-53a) is reported in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 127 P.3d 882 (2006) ("*Gila VI*"). The Order Denying Motion

2. The Apache Tribe owns water rights separate and of a different character than those rights "reserved" for the Apache Reservation by the United States. Federal reserved rights are those rights reserved by the United States with a priority at least as early as the date on which the reservation was created, as may be necessary to accomplish the federal purposes of the Reservation. *See Winters v. United States*, 207 U.S. 564 (1908). Aboriginal rights are those rights reserved or retained by the Tribe **unto itself**. *See United States v. Winans*, 198 U.S. 371 (1904); *Winters*, 207 U.S. at 576. The aboriginal rights of the Apache Tribe to the Gila River have never been ceded or extinguished. In addition, the Tribe owns prior appropriative rights on the Gila River under the doctrine of prior appropriation. *See* Statement of Claimant for by the Apache Tribe (Supplemental Appendix ("Supp. App.") 42-66). These water rights are owned by the Apache Tribe pursuant to the Law of Nations, as well as under Spanish, Mexican, and American law. Though not yet "quantified", these water rights are real, "present," and "perfected." *See Arizona v. California*, 373 U.S. 546, 600 (1963) ("*Arizona I*").

for Reconsideration (App. 54a-61a) is reported in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 134 P.3d 375 (2006). The Superior Court's May 17, 2002, Minute Entry Order in Contested Case W1-206 (App. 62a-65a), the Superior Court's March 7, 2002, Amended Order adopting the Special Master's Report and Recommendation on the claims to the Gila River by and for the Gila River Indian Community ("GRIC") in Contested Case W1-203 (App. 66a-107a), and the June 30, 2000, Special Master's Report and Recommendation in Contested Case W1-203 (App. 108a-211a), are all unpublished decisions. These decisions are reprinted in the Appendix to this Petition.

JURISDICTION

The decision of the Arizona Supreme Court was filed on February 6, 2006. The decision of the Arizona Supreme Court denying the Apache Tribe's Motion for Reconsideration was filed on May 3, 2006. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant Constitutional and Statutory Provisions cited in this Petition are set forth in the Appendix at App. 284a-288a.

STATEMENT OF THE CASE

The creation story of the Apache People in their ancestral lands places them in what is now Arizona from the beginning of life on Earth. The aboriginal territory of the Apache People was vast and full of abundant resources, including water. In 1872, the San Carlos Apache Tribe was confined to a larger Reservation of several million acres in what is now New Mexico and Arizona. Since this time, the San Carlos Apache Reservation ("Reservation") has been reduced to approximately 2 million acres. Today, the Apache Tribe (with a population of almost 13,000 members) struggles to exist within the confines of this much smaller land base, and while these lands are generally harsh and arid, the Reservation remains the "permanent home

and abiding place" for the Apache People. *See Winters*, 207 U.S. at 565.

The Gila River runs for 40 miles through the very heart of the Reservation, with nearly 1,500,000 acres in the Gila River drainage. *See* Map of the San Carlos Reservation and Gila River (Supp. App. 1).[3] The presence of the Gila River was a primary reason for the original boundaries of the Reservation.[4]

The waters of the Gila River mainstream are absolutely essential to the future of the Tribe. It is among the very poorest, if not the poorest ethnic group in the United.[5] Upstream and downstream, the non-Indian communities prosper on over 50,000 acres of verdant lands legally and illegally watered by the Gila River mainstream. Downstream from the Reservation over 100,000 acres of lands may be irrigated as part of the United States' project, known as the San Carlos Irrigation Project ("SCIP"). Within the Reservation is San Carlos Reservoir. The Apaches are not allowed to use the water in this Reservoir under the *Globe Equity Decree*.[6] Yet the Gila River flows through lands of the Apache Reservation which are so scorched and dry

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3. Like the Fort Belknap Reservation in *Winters*, 207 U.S. at 577, the lands of the Apache Reservation are also "arid and, without irrigation, . . . practically valueless."

4. *See* Annual Report of the Commissioner of Indian Affairs, November 30, 1857, 35th Congress, First Session at 583.

5. The Federal District Court charged with enforcing the 1935 federal consent decree on the Gila River known as the "*Globe Equity No. 59 Decree*" ("*Globe Equity Decree*") has observed "[t]o say that the Tribe is poor is to severely understate the plight of the Apaches. The infant mortality rate is seven times the national average. Malnutrition abounds. Housing varies from inadequate to non-existent, as does running water and electricity. Unemployment is not just rampant, it is the rule; the exceptions are the two in ten Apaches who have work." *United States v. Gila Valley Irrigation District*, 801 F. Supp. 1, 4 (D. Ariz. 1992) (internal citation omitted).

6. The construction of Coolidge Dam and San Carlos Reservoir on the Apache Reservation destroyed the town of Old San Carlos, as well as the flour mill, farms, homes, family cemeteries and religious sites of many Apaches within its path.

that one is stunned by the contrast at the boundary. No marker, sign or fence is necessary. On one side, the waters of the Gila mainstream are used by the non-Indians. On the Apache side, the River runs through, but its waters are unavailable to quench the thirst or to remedy the acute poverty and despair of the Apache People.

Water and prosperity are inseparable in Arizona. This Court's decisions in *Winans*, *Winters*, *Arizona I*, and its expectations for Arizona's stream adjudication are rendered a mockery by the conditions on the Apache Reservation today. The Tribe must be able to use the waters of the Gila River mainstream if conditions for the Apache Tribe are ever to improve.

In 1983, this Court required the United States to present **all claims** for federal reserved water rights for the Apache Reservation in Arizona's general stream adjudication pursuant to the McCarran Amendment, 43 U.S.C. § 666. *See Arizona v. San Carlos*, 463 U.S. at 571.[7] Having required the United States to adjudicate its federally reserved water rights for the Apache Reservation in a **state** forum, this Court warned that state courts like Arizona, "have a solemn obligation to follow federal law . . .", and further promised:

> [A]ny state-court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought for review before this Court, a **particularized and exacting scrutiny** commensurate with the powerful federal interest in safeguarding those rights from state encroachment.

Id. (emphasis added). The time for this Court to honor its promise to protect Indian water rights and to hold states to their "solemn obligation" to follow federal law is now. The Apache Tribe respectfully requests that this Court grant the Apache Tribe's Petition.

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7. In doing so, this Court also suggested that Indian tribes consider intervening in the state general stream adjudications in order to protect themselves. *Id.* at 545, 567, n. 17.

A. History of the Gila River Adjudication

The Gila River Adjudication began as an administrative proceeding in 1974, when Respondent, Salt River Project, filed a Petition with the Arizona Land Department to determine conflicting water rights claims in the Salt River above Granite Reef Dam outside of Phoenix. This administrative proceeding evolved into the first of Arizona's two "general" stream adjudications, namely, the Little Colorado Adjudication and the Gila River Adjudication, which are presided over by state superior courts charged under Arizona law with determining the nature, extent and relative priority of the many thousands of competing state and federal claims to Arizona's rivers and streams. *See* A.R.S. § 45–252(a) (App. 287a).

Early during Arizona's attempt to conduct its stream adjudication through administrative procedures in the State Land Department, certain Indian Tribes in Arizona, including the San Carlos Apache Tribe, sought to have their federally protected water rights adjudicated as original actions in **federal** court pursuant to 28 U.S.C. § 1362. Thus, in 1979, the San Carlos Apache Tribe filed an original action in the United States District Court for the District of Arizona, seeking to adjudication its federal reserved, aboriginal and other water rights claims in a **federal** forum. *See, e.g., San Carlos Apache Tribe of Arizona v. State of Arizona, et al.*, CIV 79-186 PHX-PGR. The Tribe's action was stayed by the Ninth Circuit, however, following this Court's decision in *Arizona v. San Carlos*, 463 U.S. at 571.[8] The Tribe's action to adjudicate its federally protected water rights is still pending before the Arizona District Court today, although it is subject to a continuing stay order.

In *Arizona v. San Carlos*, this Court held that Congress waived the sovereign immunity of the United States under the McCarran Amendment, 43 U.S.C. § 666 (App. 286a-287a) for the limited purposes of "comprehensive" state water rights adjudications in the Enabling Act states of Arizona and Montana.

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8. *See San Carlos Apache Tribe of Arizona et al. v. State of Arizona et al.*, 721 F.2d 1187 (9th Cir. 1983).

463 U.S. at 555.[9] Pursuant to the directive of this Court, the United States as trustee for the Apache Tribe, and the Tribe on its own behalf, filed defensible Statements of Claimant in the Gila River Adjudication in 1985, claiming, under oath, federal reserved, aboriginal and other water rights to the Gila River mainstream and its tributaries (Supp. App. 68-102).[10] Since that time, the Apache Tribe has faithfully participated in the Gila River Adjudication, seeking a comprehensive, fair, equal, and timely adjudication of its federally protected water rights *inter sese* with state water rights.

While this Court anticipated in *Arizona v. San Carlos* that the "specialized resources" and "experience" of the state courts would result in an efficient process for the comprehensive adjudication of state and federal water rights, *see* 463 U.S. at 551-553, 569, as explained in greater detail at Section F, *infra.*, the history of the Gila River Adjudication has done little to fulfill these expectations.

B. Proceedings Below

This Petition arises out of two different "contested cases" in the Gila River Adjudication, one involving the water rights claims by and for the Apache Tribe and one involving the water rights claims by and for the Pima Indians of the Gila River Indian Community. Because these cases have been intertwined in the proceedings below, a short procedural history of these cases is set forth here.

By Minute Entry Order dated September 11, 1998 (App. 274a), the Superior Court conducting the Gila River Adjudication directed the filing of motions for summary

9. *See also Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 811 (1976); *United States v. District Court for Eagle County*, 401 U.S. 520 (1971).

10. The United States' Statement of Claimant Nos. 39-64257, 39-64258, and 39-64259, filed November 1, 1985, claim more than 209,643 acre-feet of water per year from the Gila River mainstem (Supp. App. 68-102). The Apache Tribe's Statement of Claimant No. 39-63614, filed November 1, 1985, claims more than 643,026 acre-feet of water per year from the Gila River mainstem (Supp. App. 42-67).

judgment by those parties to the Adjudication who "believed" that the 1935 *Globe Equity Decree* may have a "preclusive effect" in the Adjudication on the water rights claims to the Gila River and tributaries made by and for GRIC.[11] This proceeding was designated "Contested Case W1-203." On August 24, 1999, the Superior Court issued a similar Minute Entry Order (App. 282a) directing the filing of motions for summary judgment regarding the "preclusive" effects of the *Globe Equity Decree* for, *inter alia*, the Apache Tribe.[12] This became "Contested Case W1-206."

The Special Master issued a Report and Recommendation in W1-203 containing findings of fact and conclusions of law regarding the preclusive effects of the *Globe Equity Decree* as to GRIC's claims on the Gila River on June 30, 2000 (App. 108a-211a). After objections and argument, the Superior Court entered an Amended Order in Contested Case W1-203 on March 7, 2002 (App. 66a-107a), adopting most of the Special Master's

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11. In the *Globe Equity Decree*, the United States stipulated for the Apache Tribe to water rights for no more than 6,000 acre feet of water from the Gila River mainstream for the irrigation of 1,000 acres of land, which could only be used for the production of "crops of value" (Supp. App. 198 & 224), while the United States secured 2,470,276 acre feet of water rights from the Gila River for its own federal project, the San Carlos Irrigation Project, as follows: (1) 210,000 acre feet with an immemorial priority (Supp. App. 198); (2) 372,000 acre feet with a priority date of 1916 (*Id.*); (3) 603,276 acre feet with priority ranging from very early (*Id.* at 210); and (4) 1,285,000 acre feet of stored water with a priority date of 1924 (*Id.* at 217), plus all groundwater underneath SCIP lands.

12. The Apache Tribe was not a "party" to the *Globe Equity Decree*, therefore opposing claimants asserting the *Decree* as preclusive of the Tribe's federally protected water rights claims in the Gila River Adjudication under *res judicata* have the burden, both on summary judgment and under the standards applicable for *res judicata*, to demonstrate three separate elements: (1) an identity of claims; (2) a final judgment on the merits; and (3) privity between parties. *See Richards v. Jefferson County*, 517 U.S. 793 (1966); *see also Moore's Federal Practice*, § 131.52 (Matthew Bender 3rd ed. 2000).

Report and ruling, *inter alia*, that *res judicata* precluded GRIC, and the United States on behalf of GRIC, from claiming any additional aboriginal, federal reserved, and other water rights to the Gila River mainstream, other than the substantial water rights secured by the United States for GRIC in the *Globe Equity*, and other decrees.

Thereafter, the Superior Court (without substantive discussion) issued a short Minute Entry on May 17, 2002, in Contested Case W1-206 (App.62a-65a), adopting its decision for GRIC in Contested Case W1-203, as the basis for granting summary judgment against the Apache Tribe in Contested Case W1-206, ruling, *inter alia*, that the United States and the Apache Tribe were precluded by the doctrine of *res judicata*, from adjudicating any federal reserved, aboriginal and other water rights claims to the Gila River mainstream, other than the annual irrigation right to 6,000 acre feet of water described in the *Globe Equity Decree*.

On November 19, 2002, the Tribe petitioned the Arizona Supreme Court for Interlocutory Review of six issues arising out of the Superior Court's decision in Contested Case W1-206.[13] The Petition was granted on November 29, 2004.

The Arizona Supreme Court issued the opinion below on February 9, 2006. The opinion summarized the "central issue" of the case as "whether claims advanced by the Tribe (and the United States on the Tribe's behalf) are precluded by a consent decree entered in 1935 by the United States District Court for the District of Arizona." *Gila VI*, 127 P.3d at 884. In answer to this question, the Supreme Court concluded "that the decree precludes the Tribe's claims to additional water from the Gila

13. On September 26, 1989, the Arizona Supreme Court adopted a Special Procedural Order Providing For Interlocutory Appeals and Certifications in the Gila River Adjudication ("Special Procedural Order") (App. 262a-271a). The Arizona Supreme Court has explained: "In a case of this magnitude, which is expected to continue for at least three or four decades, it is imperative that any significant error be corrected immediately to avoid conducting forty years of litigation only to discover the need to begin anew." *See Gila I*, 830 P.2d at 445 n.2.

River mainstream, but not to water from tributaries of the Gila." *Id.*[14] In doing so, the Supreme Court declined to allow the Apache Tribe to prove its **defenses** to *res judicata*,[15] ruling "as a matter of federal law that the doctrine of comity prevents us from considering the Tribe's argument that the [Globe Equity] Decree should not be enforceable against it because of the absence of privity . . . ." *Id.* at 801, n.22.[16] It reasoned that general principals

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14. This Petition focuses on the Supreme Court's decision below which precludes the Apache Tribe and the United States as its trustee from adjudicating its federal reserved, aboriginal and other water rights to **mainstream** of the Gila River. This Petition does not address at this time the Supreme Court's decisions regarding the **tributaries.**

15. The Apache Tribe has **not** sought to upset or invalidate the *Globe Equity Decree* in the Adjudication Court, as is suggested in the opinion below. The Tribe has simply stated, *inter alia*, that the United States, acting in "good faith", could not have intended to adjudicate all of the Apache Tribe's water rights at the time of the *Decree*, or alternatively that there was no "privity" between the United States and the Tribe in *Globe Equity* because the United States failed to adequately represent the Tribe in a myriad of ways, including by (1) failing to investigate, prepare, and prosecute the Tribe's water rights claims with any degree of due diligence or reasonable prudence; (2) including no water for most of the historically irrigated acreage on the Reservation; (3) failing to include any water to drink for the Apaches or their livestock; (4) agreeing to only a mere fraction of the water rights to which the Tribe was entitled under *Winters*, without even including sufficient water for existing needs at the time, or any water for "future" needs; (5) acting under a profound bias in favor GRIC and the non-Indian farmers in SCIDD and the Upper Valleys, while paying only nominal and occasional lip service to the Apaches' rights and claims; and (6) engaging in aggressive self-dealing, and negotiating under an actual conflict of interest, all to the profound detriment of the Tribe.

16. The Arizona Supreme Court failed to examine the *Globe Equity Decree* and its affect on the claims by and for the Apache Tribe based upon the law that existed at the time of the *Decree*, choosing instead to apply current trends regarding the law of *res judicata*. In addition, while the Arizona Supreme Court correctly described the general standards applicable to ordinary consent decrees, noting that such agreements

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of comity "compelled" the Tribe to present its challenge to the preclusive effect of the *Decree* in the federal district court which entered the *Decree*, and that such defenses were not available to the Tribe in the Gila River Adjudication. *Id.* at 897-902.

As a predicate to this ruling, the Arizona Supreme Court re-characterized the Apache Tribe's efforts to present its defenses to *res judicata* as nothing more than a collateral "attack" on the *Globe Equity Decree*, which the Tribe should present in a Rule 60(b) motion in the *Globe Equity* court.[17] By recasting the Apache Tribe's **defenses** to *res judicata* as an attack on the federal *Decree*, the Arizona Supreme Court laid a foundation for its ruling that comity requires the Apache Tribe to present its defenses to opposing claimants' affirmative defense of *res judicata* in the federal district court which retained limited jurisdiction to enforce the *Globe Equity Decree*,[18] instead of in

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"have many of the attributes of ordinary contracts . . .", *Gila VI*, 127 P.3d at 890, n.12, it completely failed to appreciate or consider that standard principles of contract interpretation **do not** have their usual force in cases involving federal Indian law. These flaws permeate the decision below on all levels. The canons of construction applicable in Indian law are rooted in the "unique trust relationship between the United States and the Indians" *County of Oneida v. Oneida Indian Nation of N. Y.*, 470 U.S. 226, 247 (1985); *see also Choctaw Nation v. United States*, 119 U.S. 1, 28 (1886). The canons require that treaties and other agreements purporting to affect Indian Tribes must be liberally construed most strongly in favor of the Indians; ambiguous expressions must be resolved in favor of the Indians; and, are to be construed as the Indians would have understood them. *See Winters*, 207 U.S. at 576-77; *see also Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970); Apache Treaty, Article 11 (App. 297a). These liberal cannons of construction favoring Indian Tribes have been specifically applied to interpretations of the *Globe Equity Decree*. *See, e.g., United States v. Gila Valley Irrigation District*, 31 F.3d 1428, 1438 (9th Cir. 1994).

17. *See Gila VI*, 127 P.3d at 901 (original opinion); *see also In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 134 P.3d at 375.

18. *See* Article XIII, Decree (Supp. App. 225).

the state Gila River Adjudication where the affirmative defense of *res judicata* was raised.[19] This ruling calls for immediate review by this Court.

C. Finality of the Decision Below

The decision below constitutes a "final judgment" for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a). The issuance of a writ of certiorari at this time is both consistent with this Court's promise to review with "particularized and exacting scrutiny" any state-court decision alleged to abridge Indian water rights protected by federal law, *see Arizona v. San Carlos*, 463 U.S. at 561, and in conformance with prior decisions of this Court regarding finality of judgments under 28 U.S.C. § 1257(a).[20]

In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court observed that the "requirement of finality is to be

19. The Supreme Court then went further to speculate, without the aid of briefing, a trial on the merits, or oral argument, how it believed the *Globe Equity* court **would have** ruled if the Tribe had attempted to "attack" the *Globe Equity Decree* in the *Globe Equity* court. *See Gila VI*, 127 P.3d at 901. The Supreme Court based its decision on a 1983 ruling of the *Globe Equity* court involving GRIC, where that court ruled that GRIC would not be permitted to intervene in the *Globe Equity* case to "complain of its representation back in 1935" (App. 212a-220a). However, the 1983 ruling (decided under standards for intervention under Fed. R. Civ. P. 24, and not in the context of an inadequate representation defense within the meaning of *Restatement (Second) Judgments*, § 42(1)(e)) relates to another Indian Tribe with a factual situation that is completely different than the Apache Tribe. The Apache Tribe was not a party in the *Globe Equity* case until 1990, whereas GRIC moved to intervene in the case **before** the *Decree* was entered. Its motion was denied in 1935, and GRIC **failed to appeal** that decision. It was this reasoning that guided the *Globe Equity* court's decision in 1983. Nevertheless, the *Globe Equity* court has never ruled as to the preclusive effect of the *Globe Equity Decree* as to the Apache Tribe or as to GRIC. *Id.*

20. In fact, the Arizona Supreme Court anticipated that there would instances in which its interlocutory decisions rendered in the Gila River Adjudication would be immediately reviewable by this Court under *Cox Broadcasting*. *See Gila River I*, 830 P.2d at 445, n.2.

given a practical rather than technical construction", 420 U.S. at 478 (internal citation omitted), and recognized "at least four categories" of cases where the Court will treat state-court judgments as "final" for jurisdictional purposes, despite the fact that further proceedings remain to take place in state court. *Id.* at 477; *see also Flynt v. Ohio*, 451 U.S. 619, 620-21 (1981).

The decision of the Arizona Supreme Court in this case falls squarely within the first and second categories enumerated by *Cox Broadcasting*. The first category of cases are those cases "in which there are further proceedings – even entire trials – yet to occur in the state courts but where for one reason or another the federal issue is conclusive or the outcome of further proceedings preordained." *Cox Broadcasting*, 420 U.S. at 479; *see also Duquesne Light Co. v. Barasch*, 488 U.S. 299, 306-307 (1989).

In the decision below, the Arizona Supreme Court expressly precluded the Apache Tribe and the United States as its trustee from **asserting or proving** the Tribe's federal reserved, aboriginal, or other water rights claims to the mainstream of the Gila River in the Gila River Adjudication. This makes the functional result of the Adjudication for the Apache Tribe **no different** today than it will be when, upon the entry of a final decree in the Adjudication, the judgment will become "unquestionably final and appealable" to this Court. *See Mills v. Alabama*, 384 U.S. 214, 217-218 (1966). In the likely never ending "meanwhile", the Tribe will be denied due process and equal protection under the law and will be unable to use the mainstream of the Gila River beyond the nominal right described in the *Globe Equity Decree*.

Thus, the decision of the Arizona Supreme Court is "the final word of a final court." *See Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75, 81 (1997).[21] This decision is plainly "conclusive" as to the water rights claims by and for the Apache Tribe to the mainstream of the Gila River, and the outcome of

21. Quoting *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551 (1945).

any further proceedings in the Adjudication regarding these claims is "preordained." *See Cox Broadcasting*, 420 U.S. at 479; *see also Pierce County v. Guillen*, 537 U.S. 129 142-143 (2003).

For many of the same reasons, the decision below also falls within the second category of *Cox Broadcasting*. The second category involves cases where "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." 420 U.S. at 480. For cases in this category, nothing could happen in the course of the proceeding below which would moot or otherwise make unnecessary the decision on the federal questions in issue. *Id.*

As noted above, the Apache Tribe's federal water rights claims to the Gila River mainstream have been effectively "adjudicated" by the decision of the Arizona Supreme Court below. Although the future of the State Adjudication process may require the resolution of many different legal questions under both state and federal law, and will entail the eventual adjudication of tens of thousands of competing water rights claims through the Gila River System and Source, nothing may occur in the course of the Adjudication that will "moot" the legal and constitutional claims being raised by the Tribe in this Petition. These federal issue will survive and require eventual review by this Court regardless of the outcome of the Adjudication.

It is also significant, as this Court noted in *Cox Broadcasting*, that of all the considerations surrounding questions of finality, "the most important competing considerations are the inconvenience and cost of piecemeal review on the one hand and the danger of denying justice by delay on the other." *Cox Broadcasting*, 420 U.S. at 478 (internal citations omitted). The balance of these competing considerations weighs heavily in favor of finality in this instance.

On the one hand, the inconvenience and cost of piecemeal review is slight. The issuance of the writ of certiorari to the Arizona Supreme Court requested in this Petition would not

stay or disrupt the Gila River Adjudication process in any substantive way. The Adjudication will continue to move forward, though at its historically glacial pace, just as it has in the past. Questions going to threshold legal issues can continue to be addressed by the Special Master and the Adjudication Court, existing contested cases can proceed without disruption, and the adjudication of other claimants' water rights will not be subject to any additional delay should this Court grant this Petition.

In contrast, a decision to deny this Petition could have serious consequences for the Adjudication process in the long run, if the Apache Tribe is required to await the conclusion of the Gila River Adjudication before it can bring its federal claims to this Court for review. Should this Court ultimately determine that the Arizona Supreme Court's decision regarding the federally protected water rights claims by and for the Apache Tribe was in error, "the entire comprehensive state-court water rights decree [entered in the Gila River Adjudication] may require massive readjustment." *See San Carlos Apache Tribe*, 463 U.S. at 579 (Justice Stevens, dissenting). This, of course, would result in "a completely unnecessary waste of time and energy" for the Adjudication Court and for all of the parties. *See Cox Broadcasting*, 420 U.S. at 478.

On the other hand, "the danger of denying justice by delay" is profound, for it thrusts an unconscionable burden on the Apache Tribe. This Court has held that there exists a "powerful federal interest" in safeguarding federally protected Indian water rights "from state encroachment." *Arizona v. San Carlos*, 463 U.S. at 571.[22] The decision below has effectively "adjudicated" the United States' and Apache Tribe's federal reserved, aboriginal, and other water rights claims to the Gila River mainstream, leaving the Tribe without the right to use a single drop of water from the Gila River mainstream for any other purpose or in any other amount other than for the irrigation of

22. *See also Winters*, 207 U.S. at 565.

1,000 acres of land as described in the *Decree*. The Tribe cannot use the waters of the Gila mainstream as a source of drinking water, for the raising of livestock, the growing of gardens, as a fundamental component of economic development, or to achieve any of those arts and industries of civilization contemplated by this Court in *Winters*.[23]

Yet, as the decision of the Arizona Supreme Court stands today, non-Indian claimants may continue to use water resources in Arizona (both legally and illegally) unfettered by any ruling from the Adjudication Court, pending the entry of a "comprehensive" water rights decree at some point in the distant future (if ever), while the Apache Tribe is prohibited **today** from using any water from the Gila River mainstream for the purposes described above. This makes the danger of delaying justice in this case profound and urgent for the Apache Tribe.

Finally, this Court has already recognized that, given the "virtually unique" nature of water rights adjudications,[24] interlocutory review of federal reserved water rights claims asserted in ongoing state court proceedings can be necessary. On at least two occasions, this Court has issued writs of certiorari to review the interlocutory decisions of state supreme courts regarding the nature or extent of specific federal reserved water rights. *See Wyoming v. United States*, 488 U.S. 1040 (1989), *affirmed without opinion*, 492 U.S. 406 (1989); *United States v. New Mexico*, 438 U.S. 696 (1978). Issues of equal significance and urgency are raised in this Petition. The decision of the Arizona Supreme Court below is "final" for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a).

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23. *Winters*, 207 U.S. at 565; *see also Gila V*, 35 P.3d at 76.

24. *See Arizona v. San Carlos*, 463 U.S. at 571.

REASONS FOR GRANTING THE PETITION

There are several compelling reasons why this Petition should be granted as contemplated by Rule 10(c) of the Rules of the United States Supreme Court. First, the Arizona Supreme Court has decided an important question of federal law which is in conflict with relevant decisions of this Court, including *Arizona v. San Carlos*, 463 U.S. 545, and *Winters*, 207 U.S. 564. Second, the decision of the Arizona Supreme Court involves important questions of law that have not been, but should be, settled by this Court.

A. The Arizona Supreme Court Has Decided an Important Question of Federal Law in Conflict with Relevant Decisions of this Court, Including *Arizona v. San Carlos* and *Winters*, and Which Defeats the Purpose of the McCarran Amendment

In the decision below, the Arizona Supreme Court refused to allow the Apache Tribe to present its **defenses** to *res judicata*, ruling "as a matter of federal law" that general principles of comity "compelled" the Tribe to present its challenge to the preclusive effect of the *Globe Equity Decree* in the federal district court which entered the *Decree*, and that such defenses were not available to the Tribe in the Gila River Adjudication. *See Arizona v. San Carlos*, 463 U.S. at 897-902. This decision stands on its head this Court's (and the Tribe's) expectations under the McCarran Amendment, *Colorado River*, *Arizona v. San Carlos*, and the Arizona Adjudication. Unless reversed, the decision of the Arizona Supreme Court would send the Tribe back to federal court, and thereby "work the very mischief that [this Court's] decision in *Colorado River* sought to avoid." *Id.* at 855. The Court below developed this novel approach to federal law based upon several significant and material misunderstandings of the history of this case and the claims which the Tribe and the United States made to the Gila River mainstream, as explained below.

1. The History of this Court's Decision in *Arizona v. San Carlos* Demonstrates that the Novel Application of Comity Called for by the Arizona Supreme Court Will Defeat the Purposes of the McCarran Amendment

The Apache Tribe was first introduced to this Court on August 20, 1982, when the Tribe filed its Brief in Opposition to Arizona's May 12, 1982, Petition for Writ of Certiorari, which appealed certain of the rulings of the Ninth Circuit arising out of the Apache Tribe's original action filed in the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1362. In the original action, the Tribe sought to adjudicate and protect its unique property rights to water from the rivers and streams on its Reservation.

The Apache Tribe's original action, as well as other original actions filed by a number of Arizona Indian Tribes, including the Navajo Nation, (collectively the "Tribes"), arose, in part, out of the Tribes' fear that the enormous non-Indian migration to Arizona, and the alarming unconstrained increase in water use by new residents,[25] would further deplete and exhaust the water supply of Arizona, leaving the Tribes' Reservations without any reliable source of water.[26] Indeed, at the time the

25. The population of Arizona has increased exponentially in the last 80 years. The population has grown from 435,573 persons in 1930, to more than 749,587 people by 1950. *See* Hobbs, Frank and Nicole Stoops, U.S. Census Bureau, Census 2000 Special Reports, Series CENSR-4, *Demographic Trends in the 20th Century*. By 1970, Arizona's population had jumped to almost 1,770,990 people. *Id.* This number has only continued to increase over the last three decades, with population numbers totaling approximately 2,718,215 people in 1980, 3,665,228 people in 1990, 5,130,632 in 2000, and with a total of 5,939,292 (est) people calling Arizona home in 2005. *Id.* The Indian population in Arizona has also grown from 95,812 people in 1970 to 270,662 in 2004. *Id.*

26. As of September 5, 2005, there were approximately 171,910 "registered wells" in Arizona. Many more are not. There were 108,433

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Apache Tribe filed its original action in federal court in 1979, the Tribe was already being denied the use of water from the Gila mainstream on its Reservation.[27]

In seeking to adjudicate their federally protected water rights in federal court, the Tribes argued, among other things, that Arizona lacked *in rem* and *in personam* jurisdiction over the Tribes and their Reservations, and urged that an adjudication of their federally protected water rights would be completed more rapidly, fairly, and competently in federal court, given the federal courts' expertise in federal Indian law and the political disinterest of federal judges, who have lifetime appointments to the federal bench.[28] The Tribes also explained that once a federal court adjudicated the federally protected water rights of the Tribes, these rights could simply be integrated *inter sese* by priority with other rights described in any future decree eventually

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wells registered and installed in the Gila Watershed from 1931 through September 2005. Of these wells, 64,320 were installed since this Court's 1983 decision in *Arizona v. San Carlos*. *See* ADWR Wells 55, Data Base, Version 9-05. The flow of all rivers in Arizona have been substantially reduced as a direct result of this pumping. There are extended periods now, where there is no flow in the Gila River mainstream on the Apache Reservation. Therefore, with the "pigs squeal" "used twice" on the Gila in Arizona in 1955 (App. 322a-326a), non-Indian water use remains largely unchecked, while the Tribe has diligently participated in the State adjudication to protect its "prior and perfected rights."

27. Arizona represented in briefing before this Court even as early as 1931, and most certainly by 1955, that the Gila River was fully consumed within the State before it could reach its confluence with the Colorado River. *See* Opening Brief of the United States in *Arizona v. California* (App. 324a-326a).

28. Given the history of rampant discrimination in Arizona against Indians, the Tribes acutely understood that resolving their federally protected water rights in a state court forum was fraught with peril. *See Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684 (Ariz. 1992), *Goddard v. Babbitt*, 536 F. Supp. 538 (Ariz. 1982).

entered in the State proceedings. Nevertheless, this Court granted Arizona's Petition for Writ of Certiorari on October 4, 1982, in Nos. 81-2147 and 81-2188 Consolidated. A decision in *Arizona v. San Carlos Apache Tribe* was issued on July 1, 1983.

In *Arizona v. San Carlos*, Arizona sought this Court's approval to acquire *in rem* and personal jurisdiction over the Apache Tribe and water rights appurtenant to its land within the Reservation, and over the United States as trustee for the Tribe. Arizona justified these efforts as necessary to obtain a "comprehensive" stream adjudication of **all** those rights to use the waters of the Gila River and its Sources, pointing to the McCarran Amendment, 43 U.S.C. § 666, and this Court's teaching in *Colorado River*, 424 U.S. 800. Arizona also promised that it would apply federal law to those property rights protected by federal law, such as the federal reserved water rights of the United States, and assured this Court that it had the "expertise" and "administrative machinery available [in its] state courts" to manage and adjudicate the tens of thousands of water claims in Arizona in a unified, comprehensive, orderly, and expeditious adjudication. *See Arizona v. San Carlos*, 463 U.S. at 570.

This Court ultimately agreed with Arizona, ruling that the McCarran Amendment waived the sovereign immunity of the United States for the limited purposes of comprehensive stream adjudications, and therefore, Arizona could acquire "**concurrent**" jurisdiction over the United States in this "limited" setting. Although this Court reaffirmed that federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them", *see Arizona v. San Carlos*, 463 U.S. at 571, it nevertheless concluded that such "general propositions" could not control in the case, given the fact that a "water rights adjudication is a virtually unique type of proceeding, and the McCarran Amendment is a virtually unique federal statute . . . ." *Id.* Thus, this Court required that the federal courts **defer** to Arizona's general stream adjudication for the

adjudication of the Tribes' federally protected water rights, concluding that any other decision would be:

> [I]nconsistent with the McCarran Amendment's policy of recognizing the availability of comprehensive state systems for adjudication of water rights as the means for conducting unified water proceedings, likely to generate additional litigation as a result of inconsistent dispositions of property, and permeated with state-law issues entirely tangential to any conceivable federal interest.[29]

Also paramount in the Court's reasoning, was its strong concern that concurrent federal proceedings would almost certainly result in "piecemeal litigation" which was likely to be:

> [D]uplicative and wasteful, generating 'additional litigation through permitting inconsistent dispositions of property' and that since a judgment by either court would ordinarily be res judicata in the other, the existence of such concurrent proceedings creates the serious potential for spawning an unseemly and destructive race to see which forum can resolve the same issue first – a race contrary to the entire spirit of the McCarran Amendment and prejudicial, to say the least, to the possibility of reasoned decisionmaking by either forum.[30]

Such a result, this Court opined, was the "very mischief that our decision in *Colorado River* sought to avoid." *Id.* at 564.

Finally, this Court admonished that "state courts, as much as federal courts, have a solemn obligation to follow federal law . . . [and] any state court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought before this Court, a particularized and exacting scrutiny

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29. *Id.* at 566 (quoting *Colorado River*, 424 U.S. at 819-820) (internal quotation marks and brackets omitted).

30. *Id.* at 567 (quoting *Colorado River*, 424 U.S. at 819) (internal citations omitted).

commensurate with the powerful federal interest in safeguarding those rights from state encroachment." *Id* at 571.

Twenty three years after this Court's decision in *Arizona v. San Carlos*, the Apache Tribe is before the Court to request its protection from the decision of the Arizona Supreme Court below which, if allowed to stand, will unravel the very purpose and reasoning behind this Court's decision in *Arizona v. San Carlos*.

2. The Arizona Supreme Court's Application of General Principles of Comity In This McCarran Amendment Proceeding Is the Antithesis of this Court's Rationale in *Arizona v. San Carlos*

The Arizona Supreme Court's reliance on general principles of comity to require the Apache Tribe to present its defense to the application of *res judicata* in the federal court which has continuing enforcement jurisdiction over the *Globe Equity Decree*, instead of in the state Adjudication where the affirmative defense of *res judicata* was raised, is irreconcilable with the rationale expressed by this Court in *Arizona v. San Carlos*. Indeed, since this Court has determined that the policies of the McCarran Amendment and concerns over "piecemeal litigation" should be elevated above the general, but strong, proposition that federal courts have a "virtually unflagging obligation" to exercise the jurisdiction given them, *see id.* at 569-571, this Court most certainly should not countenance the use of general principles of "comity", as expressed by the Arizona Supreme Court in the decision below, to trump today the very same policies or create the same concerns this Court sought to avoid in 1983 in *Arizona v. San Carlos*.

There are dozens of matters involving streams in Arizona and throughout the west where the United States may have appeared at some time in the past, whether as trustee for an Indian Tribe or in some other capacity. The danger of state courts applying comity in these situations is very real, for such an application will undoubtedly send countless parties back to the court in which the United States originally appeared to resolve

any outstanding issues regarding such representation. This is especially true for Indian Tribes throughout the west, who almost always are alleged (whether rightly or wrongly) to have been "represented" by the United States in many different proceedings involving their federally protected water rights.

If the Arizona Supreme Court's decision on comity is allowed to stand, it would leave opposing claimants free to argue (without challenge) and in violation of Constitutional protections of due process, that if the United States appeared at all, it was required to bring all claims that it could have brought at the time, and if it did not, tough luck, **regardless** of the intent or the quality of representation by the United States. Such a result would eviscerate the policy of comprehensive and unified proceedings anticipated by Congress in the passage of the McCarran Amendment.

This Court directed the Tribe towards the Arizona's stream adjudication by holding that the United States **must** file its claims on behalf of the Apache Tribe in Arizona's state Adjudication Court. Having asked for and received these claims, the Adjudication Court **should** be required to resolve all questions necessary for the adjudication of these claims, as well as any possible affirmative defenses presented in response to such claims, like *res judicata*, and it may not simply ignore any corresponding **defenses** raised in response to such affirmative defenses, including the Tribe's challenge to privity.

Finally, and perhaps more fundamentally, to employ the "tool" of comity to prevent the Tribe from proving its rights to the mainstream of the Gila River defeats the very purpose behind the Apache Reservation, because, without the waters of the Gila River mainstream, the Tribe will be unable to support itself in its "permanent tribal homeland" as anticipated by this Court in *Winters*. As the Court was reminded by the dissent in *Arizona v. San Carlos*, "[t]his court has repeatedly recognized that the Government, when it created each Indian reservation, intended to deal fairly with the Indians by reserving for them the waters

without which their lands would have been useless." 463 U.S. at 573 (internal quotations omitted).

B. The Question of Whether Comity May Be Used to Bar An Indian Tribe From Presenting a Defense to *Res Judicata* in a State General Stream Adjudication Is an Important Question of Law of Constitutional Magnitude Which Should be Decided by This Court

The decision below prohibited the Apache Tribe from proving its defenses to *res judicata* in the General Adjudication. *See Gila VI*, 127 P.3d at 898. As a result, the Tribe has never been given the opportunity at any level of the Gila River Adjudication, whether before the Special Master, in the Superior Court, or in the Arizona Supreme Court, to argue that the affirmative defense of *res judicata* cannot bar the Tribe's claims to the mainstream of the Gila River, because there was no "privity" between the United States and the Tribe in *Globe Equity* under any principle of equity, or within the meaning of *Restatement (Second) Judgments*, § 42(1)(e) (App. 121a).[31]

The Apache Tribe has not uncovered a single case in which this Court has ruled that the defense of inadequate representation is **unavailable** as a matter of law in cases involving Indian water rights claims presented in state general stream adjudications.[32]

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31. The defense of inadequate representation as set forth in § 42(1)(e), provides, in relevant part:

> A person is not bound by a judgment for or against a party who purports to represent him if: [ ]The representative failed to prosecute or defend the action with due diligence and reasonable prudence, and the opposing party was on notice of facts making that failure apparent. (Emphasis added).

32 This Court also did not consider or rule against the viability of the legal defense of inadequate representation in *Nevada v. United States*, 463 U.S. 110 (1983), which is a case often cited for principles of *res judicata* in matters involving federally protected Indian water rights. While the defense of inadequate representation was raised in a 43-day

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The contrary, this Court assumed the **viability** of the inadequate representation defense in *Arizona v. California*, 460 U.S. 605 (1983) ("*Arizona II*"), when it analyzed the argument made by a number of Indian Tribes on the Colorado River that the United States had inadequately represented the Colorado River Tribes when it secured over 782,000 acre feet of water rights to the Colorado River for the Tribes in the *Arizona v. California Decree*. *See* 460 U.S. at 627-28.

Although this Court ultimately determined, as a **factual matter**, that the Colorado River Tribes had failed to demonstrate inadequate representation, the Court nevertheless acknowledged the defense of inadequate representation as viable under the law, and examined each of the legal elements of this defense in light of the factual record below. *Id.*[33]

The new "rule" of law established by the Arizona Supreme Court in the decision below, however, elevates general principles of comity above the Constitutional protections of due process and equal protection guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution (App. 284a-285a), and breaks Arizona's promise that "Indian interests [can] be satisfactorily protected under regimes of state law . . . ." in Arizona's stream adjudication. *See Arizona v. San Carlos*, 463 U.S. at 551 (quoting *Colorado River*, 424 U.S. at 812-813).

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trial before the trial court and was argued and rejected as a **factual matter** on appeal to the Ninth Circuit, *see United States v. Truckee-Carson Irrigation District*, 649 F.2d 1286, 1295 (9th Cir. 1981), *modified at* 666 F.2d 351 (9th Cir. 1982), the viability of the legal defense of inadequate representation was **not** one of the issues raised on appeal and considered by this Court in *Nevada*.

33. Following an examination of the facts in the record, the Court found that the United States had obtained "substantial water allocations" on the Colorado River for the Tribes in the *Arizona v. California Decree*, and that this demonstrated the "competency of the United States' representation . . ." of the Tribes. *Arizona II*, 460 U.S. at 628 &.628 n.20.

In *Hansberry v. Lee*, 311 U.S. 32, 37 (1940), this Court ruled that it violates the Due Process Clauses of the Fifth and Fourteenth Amendment to the U.S. Constitution to bind litigants to a judgment rendered in an earlier litigation to which they were not parties and in which they were not **adequately** represented. This holding has been reiterated in subsequent rulings by this Court. *See, e.g., Richards v. Jefferson County*, 517 U.S. 793 (1996). In addition, in *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464, 475-476 (1918), a decision which precedes *Hansberry v. Lee* by several decades, this Court warned that "extreme applications of *res judicata* may be inconsistent with a federal right that is 'fundamental in character'", explaining that:

> The doctrine of *res judicata* rests at bottom upon the ground that the party to be affected, or some other with whom he is in privity, has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction. The opportunity to be heard is an essential requisite of due process of law in judicial proceedings. And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard, so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.

Newport, 247 U.S. at 476 (internal citations omitted). Discussing the requirement of privity in *Jefferson County*, this Court observed "[t]his rule is part of our 'deep-rooted historic tradition that **everyone should have his own day in court**.'" 517 U.S. at 799 (emphasis added) (quoting 18 C. Wright, A. Miller, and E. Cooper, *Federal Practice and Procedure* § 4449, p417 (1981)).

The Apache Tribe has never had its "own day in court", whether to adjudicate its federal reserved, aboriginal, and other

water rights claims to the Gila River mainstream, or to present its defenses to *res judicata* in a trial on the merits. The ruling below, therefore, compounds the initial violation of due process visited on the Tribe through the inadequate representation of the Tribe by the United States in *Globe Equity*, with a new violation of due process, stemming from the ruling below, wherein the Arizona Supreme Court refused to allow the Apache Tribe to prove its defenses to *res judicata* in the Gila River Adjudication, despite the fact that it was in this proceeding that the affirmative defense was raised by the Tribe's opponents.

The Apache People are also entitled to equal protection under the law. *See Buckley v. Valeo*, 424 U.S. 1, 93 (1976). The Apache Reservation is comprised of almost 2 million acres. While the Reservation is arid and hot, and often devoid of any meaningful rainfall, over these lands flow the waters of the Gila River; and while the Gila River is beyond a doubt the single most important source of water on the Reservation, the Apaches are prohibited by the decision below from even taking a drink from the Gila River mainstream as it flows on their Reservation. Instead, for approximately 1,500,000 acres in the Gila River drainage, the Tribe is entitled to use water for no more than 1,000 acres of land, because (according to the decision below), this is the water right described for the Tribe in the *Globe Equity Decree*.

Non-Indian farmers, local towns, mining companies and businesses, among other non-Indian interests are **not** bound by the same restrictions. While these non-Indians have lands on the Gila River for which **specific water** rights are described in the *Globe Equity Decree*, just like the Apache Tribe, and while many of these non-Indians **also** own additional lands on Gila River which **do not** have water rights described in the *Decree*, the non-Indians **are** permitted to claim in the Adjudication (and continue to divert and use) as much of the waters of the Gila River mainstream for these additional non-Decreed lands as they think they can "beneficially use" under Arizona law. The Apache Tribe is not.

Such unequal treatment under the law in Arizona's stream adjudication violates equal protection which is guaranteed to all persons under the U.S. Constitution.[34]

C. Arizona Has Broken its Promise to this Court, the United States, and the Tribes, that Indian Water Rights in Arizona Will Be Adjudicated in a Fair and Comprehensive Manner

Since this Court's decision in *Arizona v. San Carlos* in 1983, the State has done little to fulfill its promise of conducting a fair, expeditious, and comprehensive general adjudication of Indian water rights in Arizona. The hard fact is that not a single non-Indian water right has been adjudicated over the last 23 years.

At the outset of the Adjudication, however, the future of the Adjudication seemed not without hope. The non-Indian rights were joined with the rights of the Apache Tribe and those of the United States in the same sub-watershed for *inter sese* adjudication, and the Tribe participated actively and successfully in cases before the Special Master, the Superior Court, and the Arizona Supreme Court to establish the fundamental rules and law by which the adjudication would proceed.[35]

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34. As explained at Section F, *infra.*, Arizona has failed to fulfill its promises of conducting a "comprehensive" general stream adjudication in which the rights of **all** claimants, Indian or non-Indian, are adjudicated *inter sese*. Instead, Arizona has chosen to single out only Indian rights for adjudication. This too violates equal protection. Moreover, the Tribe's unequal treatment in the Adjudication should be reviewed under standards of "strict scrutiny" given the Apaches' position as a "suspect class" under the law.

35. *See, e.g., Gila III*, 989 P.2d 739 (holding that the federal reserved water rights doctrine applies to groundwater as well as appropriable surface water, and that groundwater necessary to satisfy these federal reserved water rights is entitled to greater protection than state based rights); *Gila V*, 35 P.3d 68 (holding that federal reserved water rights encompass all water necessary to preserve Indian tribes in

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The Hydrographic Survey Report ("HSR") for the San Pedro River was published on November 11, 1991. The HSR contained a Watershed File Report for each federal and state claim in the San Pedro sub-watershed. Objections to any claim required specific reference to the applicable state or federal laws, and required verification by the attorney for the party filing the objection.

On May 4, 1993, the Tribe, along with several other parties, filed several hundred objections to the claims presented. In order to resolve these objections, the Court established several contested cases with discovery and trial dates. The Tribe participated and substantially prevailed in these cases.

One contested case, W1-11-1676, was set for trial on April 4, 1995. Unknown to the Tribes and the United States, however, the state parties, including ADWR, drafted legislation to reverse previous decisions of the Adjudication Court favorable to the Tribe, as well as to "cure" the defects to the non-Indian claims illuminated in by the Objections filed in the San Pedro HSR, and to legislatively "adjudicate" substantially **all** of the non-Indian rights. On March 17, 1995, the Legislature passed H.B. 2276 and it was immediately signed by the Governor under an emergency clause which made it effective in 30 days. Shortly thereafter, the Adjudication Court stayed the trial in W1-11-1176, because it appeared from the "new law" that the Legislature had resolved the objections by simply changing all the laws upon which they were based.

On April 14, 1995, the Apache Tribes filed a Petition for Special Action with the Arizona Supreme Court requesting that it stay the implementation of H.B. 2276 and declare its provisions unconstitutional. The Arizona Supreme Court accepted the Tribes' Petition, but in May 1995, in what can only

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their permanent tribal homelands both now and in the future, and that in order to quantify such rights the adjudication court should examine a myriad of factors and not just the extent of practically irrigable acreage or "PIA" found on the reservations).

be described as a punitive reaction to the Tribes' previous and valid objections to non-Indian claims, the Arizona Legislature singled out federal and Indian claims for early adjudication, declaring that "'an early focus by the general stream adjudication courts'" should be "'the trial of Indian and non-Indian federal water claims.'" *See Gila VI*, 127 P.3d at 886 (quoting 1995 Ariz. Sess. Laws, Ch. 9, § 25(c)). In the meantime, while the Tribe's Special Action challenging HB 2276 was pending before the Arizona Supreme Court, the State Legislature in 1995 drastically cut funding for any efforts by ADWR involving the adjudication of non-Indian claims, and today the funding for Arizona's stream adjudication has dwindled to less than a trickle.[36]

On January 23, 1999, the Arizona Supreme Court struck down substantially all of H.B. 2276 on various constitutional grounds. *See San Carlos Apache Tribe, et al., v. Superior Court of Arizona*, 972 P.2d 179 (1999)

On August 24, 1999, the Adjudication Court (App. 282a) invited opposing water rights claimants to file motions for

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36. *See* May 19, 2006, *Report of the Special Master In the Little Colorado Adjudication Concerning Funding of the Arizona Department of Water Resources* (Supp. App. 37); *see also Arizona Department of Water Resources Status Report in the Gila River Adjudication*, dated January 13, 2006, stating in part:

> Since ADWR began working on the adjudications in the 1980s, ADWR's budget has been severely reduced. **In the mid-1990s, while legal issues were being addressed in each of the adjudications, ADWR's staffing level was reduced substantially.** When proceedings resumed, ADWR was experiencing department-wide budget constraints, some which were the result of significant shortfalls in state revenues 8 * * * The overall lack of revenues through fiscal year 2006 affected the level of resources available for ADWR for the technical and administrative support to the Gila And LCR adjudications. Although state revenues have begun to recover . . . **ADWR has not been able to obtain additional adjudication resources, and at this time appears to have lost overall resources for FY07**. (Supp. App. 20) (emphasis added).

summary judgment challenging the water rights claims made, *inter alia*, by and for the Apache Tribe, citing the purported "preclusive" effect of the federal *Globe Equity Decree*. With no risk to their own claims, which had been on hold for four years, the non-Indian parties eagerly accepted the Court's invitation, raising the affirmative defense of *res judicata* and urging the Adjudication Court to refuse to hear any evidence of the Tribe's claims for water originating on and flowing through the Reservation in the mainstream of the Gila River and its tributaries. They also urged the Court to refuse to hear any defenses of the Tribe to *res judicata*. The rulings of the Adjudication Court on this issues are what eventually gave rise to the Petition currently before this Court.

The Arizona's stream adjudication has simply come to this. Arizona has ceased to fund the "expertise and administrative machinery available to the state courts" necessary to adjudicate any non-Indian water rights claim. *See Arizona v. San Carlos*, 463 U.S. at 570. Arizona cannot use the McCarran Amendment and the facade of "comprehensive" general adjudication as a ruse to adjudicate only the Indian rights. This would be the very antithesis of this Court's rulings.

CONCLUSION

For the foregoing reasons, the San Carlos Apache Tribe respectfully requests that this Court grant its Petition and issue a writ of certiorari as to Issue 1 and Issue 2 to the Arizona Supreme Court on the decision below.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE SUPREME COURT OF ARIZONA FILED FEBRUARY 9, 2006

SUPREME COURT OF ARIZONA

No. WC-02-0003-IR

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

February 9, 2006

OPINION

HURWITZ, Justice.

This is an interlocutory appeal by the San Carlos Apache Tribe ("Apache Tribe" or "Tribe") from an order issued in the Gila River general stream adjudication. *See* Ariz.Rev.Stat. ("A.R.S.") §§ 45-251 to -264 (2003) (authorizing general stream adjudications). The central issue is whether claims advanced by the Tribe (and the United States on the Tribe's behalf) are precluded by a consent decree entered in 1935 by the United States District Court for the District of Arizona. We conclude that the decree precludes the Tribe's claims to additional water from the Gila River mainstem, but not to water from tributaries of the Gila.

Appendix A

I.

A.

The San Carlos Apache Reservation was established in 1872. The Gila River Indian Community ("GRIC") Reservation was established in 1859. Each reservation borders the Gila River.[1]

In the late 1800s, the federal government began considering a storage dam on the Gila River to provide water to the Tribe, GRIC, and non-Indian landowners in the Florence-Casa Grande area. In 1924, Congress first appropriated funds for the San Carlos Irrigation Project ("San Carlos Project"), a reclamation project involving construction of the Coolidge Dam on the Gila River and the creation of the San Carlos Reservoir. To facilitate the development of the San Carlos Project, the United States entered into agreements in 1924 with landowners along the Gila River (the "Landowners' Agreements"). Under these agreements, the landowners conveyed water rights appurtenant to their lands to the United States in exchange for San Carlos Project waters.

In 1925, the United States filed a complaint (the "Complaint") in the United States District Court for the

1. "The Gila River originates in Western New Mexico and flows in a general westerly direction across Arizona to its confluence with the Colorado River." *United States v. Gila Valley Irrigation Dist.*, 454 F.2d 219, 220 (9th Cir.1972). "The land through which the stream flows is semi-arid or desert land requiring irrigation for successful agricultural or horticultural results." *Gila Valley Irrigation Dist. v. United States*, 118 F.2d 507, 508 (9th Cir.1941).

District of Arizona on behalf of itself, the Tribe, GRIC, and landowners within both the San Carlos Project and the Florence-Casa Grande Project (an earlier reclamation project on the Gila River). The Complaint named as defendants numerous individuals, irrigation districts, canal companies, and corporations. The Complaint alleged that GRIC, the Apache Tribe, and the reclamation projects were entitled to certain quantities of water from the Gila River and its tributaries and that the defendants' claims were "in conflict with or adverse to" the rights of the tribes and the projects. Compl. ¶ 7. The Complaint sought a determination of the rights of the parties "to the use of the waters flowing in said Gila River and its said tributaries." *Id.* ¶ 8.

Two years later, the United States filed an amended complaint (the "Amended Complaint"). The Amended Complaint denominated all parties other than the tribes and the United States as defendants, but explained that landowners "who have by contracts devoted their water rights to the said Florence-Casa Grande Project, and the San Carlos Project . . . are interested on the side of the United States in this action." Am. Compl. ¶ 15. In contrast to the initial Complaint, which sought an adjudication of rights to the "waters from said Gila River and its tributaries," Compl. ¶ 8, the Amended Complaint sought only to adjudicate the parties' rights to the "waters of the Gila River." Am. Compl. ¶¶ 14, 15.

Litigation continued over the next eight years. In 1935, the United States entered into stipulations dismissing without prejudice all defendants who maintained claims only to waters of the Gila River tributaries. The remaining parties

stipulated to the entry of the Globe Equity Decree (the "Decree"). The Decree states that the parties "have concluded and settled all issues in this cause" and that the Decree "embodie[s] . . . and confirm[s]" the settlement of the parties. The Decree then "defin[es] and adjudicat[es] the [ ] claims and rights" of the parties by listing the dates of priority and amounts of water to which each is entitled. The Decree also specifies the places at which the parties may divert water.

The Decree is administered by a Water Commissioner appointed by the district court. The district court has retained jurisdiction to enforce and interpret the Decree. Litigation interpreting the Decree began soon after its entry and has continued ever since.[2]

B.

Arizona law provides for the determination of multiple water use claims through general stream adjudications. *See* A.R.S. §§ 45-251 to -264. The Gila River general stream adjudication began in 1981 when we ordered a series of petitions consolidated into a single proceeding. *See In the Matter of the Rights to the Use of the Gila River* ("*Gila I* "), 171 Ariz. 230, 232-33, 830 P.2d 442, 444-45 (1992).[3] In 1995,

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2. The first Ninth Circuit decision involving the Decree was *Gila Valley Irrigation District v. United States*, 118 F.2d 507 (9th Cir.1941), and the most recent was *United States v. Gila Valley Irrigation District*, 117 F.3d 425 (9th Cir.1997).

3. The history of the Gila River general stream adjudication is documented in previous decisions of this and other courts. (Cont'd)

the Legislature declared that "an early focus by the general stream adjudication courts" should be "the trial of Indian and non-Indian federal water claims." 1995 Ariz. Sess. Laws, ch. 9, § 25(C). The superior court accordingly directed interested parties to file summary judgment motions as to whether claims raised by or on behalf of the Tribe in the general stream adjudication were precluded by the Decree.

In 2001, GRIC, ASARCO LLC, Phelps Dodge Corporation, the City of Safford ("Safford"), the Gila Valley Irrigation District ("GVID"), the Franklin Irrigation District ("FID"), and the San Carlos Irrigation and Drainage District ("SCIDD") filed summary judgment motions. These motions argued that the Decree precludes the Tribe, and the Government on its behalf, from asserting additional claims to water from the Gila River and its tributaries. Some motions also contended that under the Supreme Court's opinion in *Nevada v. United States*, 463 U.S. 110, 103 S.Ct. 2906, 77 L.Ed.2d 509 (1983), non-parties to the Decree could assert the claimed preclusive effect of the Decree.

(Cont'd)

See Arizona v. San Carlos Apache Tribe of Ariz., 463 U.S. 545, 557-59, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983) (subsection entitled "The Arizona Cases"); *Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 201 Ariz. 307, 309-10 ¶¶ 1-2, 35 P.3d 68, 70-71 (2001); *Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 198 Ariz. 330, 333-34 ¶¶ 1-2, 9 P.3d 1069, 1072-73 (2000); *Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 195 Ariz. 411, 413-14 ¶¶ 1-5, 989 P.2d 739, 741-42 (1999); *Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 175 Ariz. 382, 384-85, 857 P.2d 1236, 1238-39 (1993); *Gila I*, 171 Ariz. at 232-33, 830 P.2d at 444-45; *United States v. Superior Court*, 144 Ariz. 265, 270-71, 697 P.2d 658, 663-64 (1985) (subsection entitled "The Controversy").

The Tribe also filed a summary judgment motion, arguing that the Decree does not preclude its claims to additional water from the Gila River or the San Carlos River, a tributary of the Gila. The Tribe also argued that the Landowners' Agreements preclude GRIC from asserting claims to the San Carlos River.

On May 17, 2002, the superior court granted partial summary judgment to ASARCO, Phelps Dodge, Safford, SCIDD, GVID, and FID. The court held that the Decree was limited to the Gila River mainstem and did not cover its tributaries. The superior court also held that non-parties to the Decree could assert its preclusive effect.[4]

Given the lengthy nature of general stream adjudications, we have provided for interlocutory review of certain superior court orders. Special Procedural Order Providing for Interlocutory Appeals and Certifications (September 26, 1989); *see Gila I*, 171 Ariz. at 233 n. 2, 830 P.2d at 445 n. 2 (discussing the Special Procedural Order). We granted interlocutory review of six issues raised by the Apache Tribe and one issue raised by Phelps Dodge. Each of these issues turns on the preclusive effect of the Decree.[5]

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4. On March 7, 2002, the superior court had entered an order holding that "neither GRIC nor the United States on behalf of GRIC shall be entitled to claim water rights relating to the mainstem of the Gila River . . . except to the extent that such rights were granted to them by the *Globe Equity Decree*." The superior court's May 17, 2002 order, which is the subject of this appeal, refers to and incorporates by reference this previous order.

5. The six issues raised by the Tribe are as follows:

(1) "Where the San Carlos Apache Reservation was established pursuant to the Apache Treaty of 1852 as a

(Cont'd)

Appendix A

(Cont'd)

Permanent Tribal Homeland of nearly 2 million acres, with nearly 1,500,000 acres on the Gila River, did the Superior Court err when it denied the Apache Tribe a trial on the merits of its claims by granting a motion for partial summary judgment holding that the doctrine of res judicata preclude[s] the Tribe from claiming water for its Tribal homeland in excess of the United States['] right to water for 1,000 acres under the Globe Equity Decree?" (2) "Did the Superior Court err in ruling that [the] statement of facts in its Amended Order in W1-203 involving GRIC also applies to the Apache Tribe in W1-206?" (3) "Did the Trial Court err when it denied the Apache Tribe's request for an evidentiary hearing on the adequacy of the representation of the United States as its Trustee under § 42(1)(e) of the *Restatement (Second) of Judgments* [,] and ruled that res judicata applies to the Apache Tribe under [the] Decree?" (4) "Did the Superior Court err where it failed to conclude that the United States lacked any authority from Congress to represent the Apache Tribe in Globe Equity or to dispose of Tribal property which would preclude the application of res judicata; or alternatively, where it failed to conclude that the issue of lack of authority is a disputed genuine issue[ ] of material fact?" (5) "Did the Superior Court err in failing to determine that the Landowners' Agreement of 1924 or the Decree, specifically preclude GRIC, and the United States on behalf of GRIC, from claiming any water rights to the San Carlos River in the Gila River stream adjudication?" (6) "Did the Superior Court err when it ruled that the 'mutuality exception' under *Nevada v. United States*, 463 U.S. 110, 103 S.Ct. 2906, 77 L.Ed.2d 509 (1983), does not apply to bar any claims that the parties to the Decree may have to any of the tributaries of the Gila River in the Gila River stream adjudication?"

(Cont'd)

Appendix A

This Court has jurisdiction over this interlocutory appeal pursuant to Article 6, Section 5(3) of the Arizona Constitution and the Special Procedural Order.[6] We review grants of summary judgment de novo. *See Duncan v. Scottsdale Med. Imaging, Ltd.*, 205 Ariz. 306, 308 ¶ 2, 70 P.3d 435, 437 (2003).[7]

(Cont'd)

Phelps Dodge raised the following issue:

> "Did the Superior Court err when it found that the claims of the parties in the *Globe Equity 59* proceedings to waters of the Gila River's tributaries had been 'split' from those same parties' claims to the main stem waters of the Gila River, and therefore that such tributary claims had not been part of the GE 59 Decree and were not affected by the same preclusive, *res judicata* effects that the GE 59 Decree had on the parties' claims to the river's main stem?"

6. Our Special Procedural Order "is the exclusive remedy for the presentation of interlocutory issues to this court in this adjudication" and was issued pursuant to Article 6, Section 5 of the Arizona Constitution, A.R.S. § 45-259 and § 12-2101 (2003), and Rule 19(a)(3) and (f) of the Arizona Rules of Civil Appellate Procedure. Gila I, 171 Ariz. at 233 n. 2, 830 P.2d at 445 n. 2.

7. After granting review, we entered an order permitting "[a]ny party that properly filed a notice of appearance in this matter" to submit a brief. Pursuant to that order, the United States, the Apache Tribe, GRIC, Phelps Dodge, ASARCO, SCIDD, Safford, GVID, FID, and Salt River Project ("SRP") filed briefs.

II.

Federal law dictates the preclusive effect of a federal judgment. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001) (noting that state courts cannot give federal judgments "merely whatever effect they would give their own judgments, but must accord them the effect that [the United States Supreme] Court prescribes"); *Heck v. Humphrey*, 512 U.S. 477, 488 n. 9, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994) ("State courts are bound to apply federal rules in determining the preclusive effect of federal-court decisions on issues of federal law."); *First Pac. Bancorp v. Helfer*, 224 F.3d 1117, 1128 (9th Cir.2000) ("When considering the preclusive effect of a federal court judgment, we apply the federal law of claim preclusion."); Restatement (Second) of Judgments ("Second Restatement") § 87 (1982) ("Federal law determines the effects under the rules of res judicata of a judgment of a federal court."). Thus, our task is to give the Decree the same preclusive effect as the federal courts would give it.

We deal today with the issue of claim preclusion, formerly referred to as res judicata.

> Simply put, the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, 'it is a finality as to the claim or demand in controversy, concluding parties and those in privity with them . . . as to every matter which was offered and received to sustain or defeat the claim or demand. . . .'

Nevada, 463 U.S. at 129-30, 103 S.Ct. 2906 (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352, 24 L.Ed. 195 (1876)) (internal alteration omitted); *see also Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d *210 (1979)* ("Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action."). The defense of claim preclusion has three elements: (1) an identity of claims in the suit in which a judgment was entered and the current litigation, (2) a final judgment on the merits in the *888 previous litigation, and (3) identity or privity between parties in the two suits. *Blonder-Tongue Lab., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 323-24, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971).[8]

The parties agree that the Decree is a final judgment and satisfies the second element of claim preclusion. The parties differ sharply, however, as to whether the other two elements of claim preclusion-an identity of claims and privity-are present in this case. We address these issues in turn below.

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8. Only claim preclusion is at issue in this case. " '[C]onsent judgments ordinarily support claim preclusion but not issue preclusion.' " *Arizona v. California*, 530 U.S. 392, 414, 120 S.Ct. 2304, 147 L.Ed.2d 374 (2000) (quoting 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4443 (1981)). This is because issue preclusion (formerly referred to as collateral estoppel) "attaches only when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment. In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated." *Id.* (internal alterations and citations omitted).

III.

The parties advance very different positions as to what claims were asserted in the Globe Equity litigation and adjudicated by the Decree. The Tribe argues that the United States (as trustee) asserted only a theory of prior appropriation. The Tribe contends that the Decree therefore does not address the Tribe's "aboriginal" water rights or *Winters* reserved water rights.[9] The Tribe also argues that the Decree did not involve claims to the tributaries of the Gila River, particularly the San Carlos River. The United States agrees with the Tribe with respect to claims to tributaries of the Gila River, but does not expressly contest that the Decree covered all claims to water from the Gila River mainstem. GRIC takes no position as to whether the various parties' motions for summary judgment should have been granted, but argues that the Globe Equity litigation sought to quantify water rights for only the Gila River mainstem.

In contrast, Phelps Dodge, SCIDD, Safford, GVID and FID argue that the Decree resolved all of the Tribe's claims to water both in the Gila River mainstem and its tributaries. SRP argues that the Decree precludes the Tribe from asserting additional claims to the Gila River mainstem, but takes no position with respect to the tributaries. ASARCO contends

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9. As the Supreme Court has noted, its decision in *Winters v. United States*, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908), established that when the federal government creates an Indian reservation, it "impliedly reserve[s] a right to the amount of . . . water necessary to effectuate the purposes" of the reservation. *Nevada*, 463 U.S. at 116 n. 1, 103 S.Ct. 2906.

that the Apache Tribe and the United States are precluded only from asserting claims for additional water from the Gila River and the San Carlos River, but that they may assert claims to waters from other Gila River tributaries; ASARCO also argues that the Decree awarded waters of the San Carlos River to ASARCO through its predecessor, Kennecott Copper Corporation ("Kennecott").

A.

The Supreme Court of the United States has never precisely defined the test for determining if there is an identity of claims in two actions for purposes of claim preclusion. Before the adoption of the Federal Rules of Civil Procedure in 1938, federal case law focused on the "causes of action" asserted in the two suits. *See, e.g., United States v. Memphis Cotton Oil Co.*, 288 U.S. 62, 67-68, 53 S.Ct. 278, 77 L.Ed. 619 (1933) ("A 'cause of action' may mean one thing for one purpose and something different for another."); *see also* O.L. McCaskill, *Actions and Causes of Action*, 34 Yale L.J. 614, 614 (1925) ("The cause of action has not been understood. Eminent writers . . . have failed to agree as to its character and scope."). In those days, "the courts were prone to associate claim with a single theory of recovery, so that, with respect to one transaction, a plaintiff might have as many claims as there were theories of the substantive law upon which he could seek relief against the defendant." Second Restatement § 24 cmt. a.

Under this approach, the federal courts developed a number of tests for determining whether two causes of action were the same for purposes of claim preclusion. One test

focused on the "primary right" of the plaintiff that allegedly had been infringed. *See, e.g., Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 321, 47 S.Ct. 600, 71 L.Ed. 1069 (1927) ("A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show."). Another test focused on whether the same evidence considered in the first suit would sustain the second. *See* Restatement of Judgments ("First Restatement") § 61 (1942) ("[T]he plaintiff is precluded from subsequently maintaining a second action based upon the same transaction, if the evidence needed to sustain the second action would have sustained the first action."); *see also* John F. Wagner, Jr., Annotation, *Proper Test to Determine Identity of Claims for Purposes of Claim Preclusion by Res Judicata Under Federal Law*, 82 A.L.R. Fed. 829, 1987 WL 419509 (1987) (collecting case law establishing different tests).

After the adoption of the Federal Rules of Civil Procedure in 1938, the "tests for determining the identity of a claim or cause of action . . . developed concomitantly with the evolution of modern civil procedure." Wagner, *supra*, at 836; *see also Nevada*, 463 U.S. at 130, 103 S.Ct. 2906 (noting that "[d]efinitions of what constitutes the 'same cause of action' have not remained static over time," and citing the changes between the First and Second Restatements of Judgments). "With the adoption of the Federal Rules of Civil Procedure and the unified form of action . . . much of the controversy over 'cause of action' abated." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). Thereafter, the test for determining the identity of claims focused on the "transaction" or "natural grouping or common nucleus of operative facts" making up

the plaintiff's claims. Second Restatement § 24 cmt. b; *see also Williamson v. Columbia Gas & Elec. Corp.*, 186 F.2d 464, 470 (3d Cir.1950) (noting that the "modern systems of pleading, especially the federal system, as exemplified by the free permissive joinder of claims, liberal amendment provisions, and compulsory counterclaims" altered the definition of "claim" for purposes of claim preclusion).

"Seven of the thirteen federal circuit courts, as well as the Claims Court have thus far expressly adopted the [Second] Restatement's transactional approach" to defining a claim for purposes of claim preclusion. Wagner, *supra*, at 837. While the Supreme Court has not explicitly adopted the Second Restatement's transactional approach, it has applied a transactional analysis in several different contexts in which the definition of "claim" was legally significant. *See, e.g., United Mine Workers*, 383 U.S. at 725, 86 S.Ct. 1130 (holding that for purposes of pendent jurisdiction the "state and federal claims must derive from a common nucleus of operative fact"); *Reeves v. Beardall*, 316 U.S. 283, 286, 62 S.Ct. 1085, 86 L.Ed. 1478 (1942) (holding that because the plaintiff's "two claims arose out of wholly separate and distinct transactions," the district court's decision on one claim was a final judgment for purposes of Rule 54(b)).

We assume, without deciding, that the federal courts would utilize the Second Restatement's transactional test for determining the identity of claims in this case. Under the Second Restatement, the determination of what "factual grouping constitutes a 'transaction' " is "not capable of mathematically precise definition; it invokes a pragmatic standard to be applied with attention to the facts of the case."

Second Restatement § 24(2), cmt. b. Defining the transaction that makes up a claim involves a consideration of "whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations. . . ." *Id.* § 24(2).

Under the Second Restatement test, the claims to the Gila River mainstem asserted by the United States in the Globe Equity litigation would not seem to be part of the same "transaction" as its claims to the tributaries. Because claims to water depend in part on the location of the party asserting the claim, the facts needed to establish a claim to the Gila River mainstem are necessarily spatially distinct from those needed to establish a claim to a tributary. The "origins" of these claims may also be dissimilar. Moreover, the dismissal without prejudice from the Globe Equity litigation of all defendants with claims to the tributaries indicates that the parties determined that the most "convenient trial unit" for claims to the Gila River mainstem was one that excluded the tributaries. That dismissal also indicates that the parties expected that claims to waters of the tributaries would be resolved later.

B.

We need not, however, decide today whether the Second Restatement test, or the earlier "cause of action" test of the First Restatement, governs the preclusive effect of the Decree.[10]

10. Because the Decree was entered in 1935, it is not clear under federal law what test would have applied then. *See Nevada*, 463 U.S. at 131 n. 12, 103 S.Ct. 2906 (noting that more than one test for identity of claims was used in 1944 when the Orr Ditch decree was entered).

Whatever the appropriate test for establishing identity of claims in two actions, it is clear that parties to a consent decree can agree to limit the decree's preclusive effects. "The basically contractual nature of consent judgments has led to general agreement that preclusive effects should be measured by the intent of the parties." 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4443 (1981).[11] Thus, while a judgment will ordinarily preclude later litigation of "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction," Second Restatement § 24(1), that rule does not apply when the parties "have agreed in terms or in effect that the plaintiff" may reserve a portion of its

11. Many federal cases recognize this principle. *See, e.g., United States ex rel. Barajas v. Northrop Corp.*, 147 F.3d 905, 911 (9th Cir.1998) ("A settlement can limit the scope of the preclusive effect of a dismissal with prejudice by its terms."); *Satsky v. Paramount Commc'ns, Inc.*, 7 F.3d 1464, 1468 (10th Cir.1993) (quoting same language from Wright & Miller, *supra*, § 4443); *Int'l Union of Operating Eng'rs-Employers Constr. Indus. Pension, Welfare & Training Trust Funds v. Karr*, 994 F.2d 1426, 1432-33 (9th Cir.1993) (holding that parties wishing to "preclude the application of res judicata to a future action . . . can reserve that right" by agreement, and referring to Wright & Miller, *supra*, § 4443); *Keith v. Aldridge*, 900 F.2d 736, 740-41 (4th Cir.1990) (citing Wright & Miller, *supra*, § 4443 for the proposition that "[w]hen a consent judgment entered upon settlement by the parties of an earlier suit is invoked by a defendant as preclusive of a later action, the preclusive effect of the earlier judgment is determined by the intent of the parties"); *May v. Parker-Abbott Transfer & Storage, Inc.*, 899 F.2d 1007, 1010 (10th Cir.1990) ("This court recognizes that consent decrees are of a contractual nature and, as such, their terms may alter the preclusive effects of a judgment.") (citing Wright & Miller, *supra*, § 4443).

claim, *id.* § 26(1)(a). This is because the "main purpose" of precluding further litigation on a claim "is to protect the defendant from being harassed by repetitive actions based on the same claim. The rule is . . . not applicable where the defendant consents, in express words or otherwise" to allow the plaintiff to pursue his claim in multiple suits. *Id.* § 26 cmt. a.[12]

The parties' agreement to limit the preclusive effect of a judgment by permitting the plaintiff to try only a portion of its claim may be either express or implied. *Id.* § 26(1)(a). The Second Restatement elucidates this point:

> After a collision in which A suffers personal injuries and property damage, A commences in the same jurisdiction one action for his personal injuries and another for the property damage against B. B does not make known in either action his objection (usually called "other action pending") to A's maintaining two actions on parts of the same claim. After judgment for A for the

12. In determining the preclusive effect of the Decree, we are mindful that "since consent decrees . . . have many of the attributes of ordinary contracts, they should be construed basically as contracts." *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236, 95 S.Ct. 926, 43 L.Ed.2d 148 (1975) (footnote omitted). The Decree's "scope . . . must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it." *United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971). Thus, the Decree "must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation." *Id.*

> personal injuries, B requests dismissal of the action for property damage on the ground of merger. Dismissal should be refused as B consented in effect to the splitting of the claim.

Id. § 26 cmt. a, illus. 1. Applying this principle, the Ninth Circuit has held that a county's failure to object in state court proceedings to a plaintiff's attempt to reserve its Fifth Amendment takings claim for federal court impliedly permitted the plaintiff to bring the later federal action. *Dodd v. Hood River County*, 59 F.3d 852, 861-62 (9th Cir.1995).

In addition to permitting parties to limit the preclusive effects of their judgments, federal law recognizes the power of a court in a first action to reserve the plaintiff's right to maintain a second action on part of a claim. *Id.* at 862 ("A court may be able to reserve part of a plaintiff's claim for subsequent litigation by expressly omitting any decision with regard to it in the first judgment."); Second Restatement § 26(1)(b). Thus, when a court determines that its judgment is without prejudice "to a second action on the omitted part of the claim," that determination prevents the first judgment from obtaining preclusive effect in the second action. Second Restatement § 26 cmt. b; *see also* Wright & Miller, *supra*, § 4413 ("A judgment that expressly leaves open the opportunity to bring a second action on specified parts of the claim or cause of action that was advanced in the first action should be effective to forestall preclusion.").

Given this well-recognized right of the parties and the courts to limit the preclusive effect of their judgments, we must determine what claims were actually adjudicated by the Globe

Appendix A

Equity litigation and what preclusive effect the Decree was intended to have.

1.

The first issue we address is whether the Decree adjudicated claims to the tributaries of the Gila River. The starting point in that analysis is the language of the Complaint and the Amended Complaint. The initial Complaint stated that the

> sole source of water necessary and proper for the economical and successful irrigation and cultivation of such lands under the said San Carlos Irrigation Project is the said Gila River *together with its tributaries thereto* lying to the East of the said Gila Indian Reservation, to-wit: The San Pedro River, the San Carlos River, San Francisco River, Blue River and Eagle Creek[.]

Compl. ¶ 5 (emphasis added). The prayer for relief in the initial Complaint asked

> [t]hat the court by its decree determine the relative rights of the parties hereto, in area and extent, and in duration according to their relative rights respectively in priority of appropriation, in to and of the waters of the said *Gila River and its tributaries* in Arizona and New Mexico, including natural flow and flood waters, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and

> for what purposes, where, by what means of diversion and with what priorities.

Id. ¶ 8 (emphasis added). The Complaint specifically referred to the "Gila River and its tributaries" numerous times, including the report of the waters previously appropriated by the Apache Tribe, *id.* ¶ 3(c), the identification of the defendants and their claims, *id.* ¶ 7, and the prayer for relief, *id.* ¶ 8.

In contrast, the Amended Complaint specifically excludes the Gila River tributaries. In defining the defendants' claims, the Amended Complaint states:

> Each of the defendants . . . claims some right to divert water from the Gila River as it flows between a line 10 miles east of the parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, and *after the following tributaries of the Gila River*, the San Francisco River, the San Carlos River, the San Pedro River, and the Santa Crus [sic] River, respectively, *have joined the main stream*, and all but a few of said diversions being in the District of Arizona; or the said defendants claim some right to store the water of said river, or of some tributary thereof, *either within or above the stretch of the same as just described.*

Am. Compl. ¶ 15 (emphasis added). Thus, the portion of the Gila River placed in dispute by the Amended Complaint was the Gila River *after* the tributaries join the mainstem.

Appendix A

The prayer for relief in the Amended Complaint requested

> [t]hat the Court, by its decree, determine the rights of the parties hereto to the waters of said river and its tributaries and the rights of said parties to divert water from *said river within the area aforesaid* and for storage above, to the end that it may be known how much of said waters may be diverted from *said river* by the parties hereto and for what purposes, where, by what means of diversion and with what priorities.

Id. Prayer (emphasis added). Although the prayer at first seems to suggest that the parties' rights to water in the Gila River tributaries are in fact at issue, it then makes clear that the Government is only seeking to adjudicate rights in the "area aforesaid" and from "said river"-language consistent with the notion that the Amended Complaint was directed only to the parties' rights to waters in the Gila River mainstem. This conclusion is buttressed by paragraph fifteen of the Amended Complaint which makes clear that the "area aforesaid" is the "Gila River . . . after the following tributaries . . . have joined the main stream." *Id.* ¶ 15.

The procedural history of the Decree reinforces this conclusion. After filing the Amended Complaint, the United States obtained the dismissal of all defendants with claims solely to the tributaries of the Gila River. The Decree explicitly states that certain defendants, all of whom maintained claims to the tributaries, were dismissed "because their claims and rights, if any, were and are outside the scope of said suit as same was and is outlined and defined in the amended complaint herein." Both the defendants and their "claim [s] or rights to the use of water

which said defendants . . . now or hereafter may have" were dismissed "without prejudice." This was because "five stipulations between the plaintiff and the defendants" established "that the dismissal of said defendants should be accomplished upon motion of the plaintiff and Order of this Court."

The effect of this dismissal without prejudice was to exclude from the Globe Equity litigation any claims by the dismissed defendants to the tributaries of the Gila River. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990) (A "dismissal without prejudice is a dismissal that does not operate as an adjudication upon the merits and thus does not have a res judicata effect.") (internal citation and alterations omitted). Indeed, the Decree expressly so states, providing that defendants with claims to the tributaries would "be left as though they never had been named or made parties defendant." The court "confirmed" that the dismissals were "made a part of this decree to protect [the defendants'] rights in that respect." Given that the Decree made plain that it was not resolving the claims of the dismissed defendants to water of the tributaries, it naturally follows that the Decree also did not adjudicate the Tribe's claims to the tributaries, as the dismissed defendants would have been necessary parties to any such adjudication.

Our conclusion that claims to water from the tributaries were not adjudicated by the Decree is further supported by the Decree's schedule of rights and priorities. The Decree states that "the Gila River is the stream from which the water called for under each of said rights is and may be diverted." The portion of the Decree establishing the rights of the various parties to use the waters of the Gila River refers only to the "waters of the Gila River." In enumerating the rights of GRIC, the Apache

Tribe, the San Carlos Project, and the Gila Crossing District to divert water, the Decree specifically refers to their rights to "divert . . . the waters of the Gila River." Similarly, in establishing the parties' storage rights, the Decree refers to "[t]he right . . . to store the waters of the Gila River in the San Carlos Reservoir." Finally, Article XIII states:

> [A]ll of the parties to whom rights to water are decreed in this cause 13. Several parties argue that we should read the phrase "or any thereof" in Article XIII to mean "or any tributary thereof." We decline that invitation. In context, the phrase is most naturally read as referring to a portion of the waters of the Gila River mainstem. are hereby forever enjoined and restrained from asserting or claiming—as against any of the parties herein . . .—any right, title or interest in or to the waters *of the Gila River*, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof. . . .

(Emphasis added.)[13]

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13. Several parties argue that we should read the phrase "or any thereof" in Article XIII to mean "or any tributary thereof." We decline that invitation. In context, the phrase is most naturally read as referring to a portion of the waters of the Gila River mainstem.

2.

Notwithstanding this compelling evidence that the Decree was intended to adjudicate only rights in the Gila River mainstem, various parties arguing to the contrary point to language in the Decree regarding the proper method for measuring the amount of water to be diverted by the so called "upper valley defendants":

> [P]rovided further that the drafts on the stream by the upper valley [ ] defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico *and a gauging station located in the San Francisco River immediately above its confluence with the Gila River* and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona[.]

(Emphasis added.) Rather than establishing any right to the waters of the San Francisco River, however, this provision merely establishes a method of measuring flows in the Gila River based on readings at certain gauging stations. Some of the stations used to measure those flows are located on the tributaries that feed into the Gila River, but the Decree does

not establish any party's right to divert from those flows as opposed to the mainstem itself.

ASARCO also argues that the Decree awarded Kennecott, its predecessor, "the water from the San Carlos River." ASARCO relies on a provision in the Decree describing Kennecott's right to divert water when upstream defendants have been given water from the "available storage in the San Carlos Reservoir." When that happens, Kennecott is entitled to an apportionment "of the natural flow of the Gila River" as "gauged by and deemed to correspond with the natural flow of the Gila River and San Carlos River at the points where said streams enter the San Carlos Reservoir." ASARCO claims that this language gives it rights to San Carlos River water.

We do not so read the Decree. Because the Decree establishes the parties' rights to water both from the flow of the Gila River and from waters stored in the San Carlos Reservoir, the Decree required some method for gauging how much of each source was being used. The reference to the San Carlos River upon which ASARCO relies simply enables the Water Commissioner to measure the flow of water *in the Gila River* to which Kennecott is entitled.[14] The provision does not award Kennecott any water from the San Carlos River, nor does any other portion of the Decree.

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14. Kennecott's property was not located on the San Carlos River, but rather on the Gila River, well downstream from the confluence of the San Carlos and Gila Rivers.

3.

SCIDD argues that "the practical impacts" of the Decree indicate that it must have adjudicated rights to waters of the tributaries of the Gila River in addition to the mainstem. SCIDD asserts that because "the Gila River is largely a product of the inflows from the Gila River's tributaries[,] [i]f those tributaries can be dammed or diverted with impunity, the protections offered by the *Globe Equity* Decree are illusory." It does not follow, however, that simply because the rights of parties on the tributaries were not adjudicated in the Globe Equity litigation, such rights are limitless or that parties with claims to the waters of the tributaries may divert the flow of those tributaries with "impunity." The rights of those with claims to the Gila River tributaries will be determined in this Gila River general stream adjudication. To the extent that those rights conflict with rights vested under the Decree, that issue can be addressed by the superior court in future proceedings.

4.

In sum, we conclude that the Decree adjudicated only claims to the Gila River mainstem and not to its tributaries. The Decree therefore has no preclusive effect as to the tributaries.

C.

The next issue is what claims to the mainstem were adjudicated by the Decree. The Tribe argues that the Decree adjudicated only its appropriative rights and not aboriginal

or *Winters* rights. Other parties claim that the Decree adjudicated all claims of the Tribe to the mainstem.

The starting point is once again the language of the Amended Complaint. The Amended Complaint first alleges generally that the members of the Apache Tribe were "occupants and possessors of large areas of land with water rights appertaining thereto." Am. Compl. ¶ 3. The Amended Complaint declares that the United States has the power to assert claims to water on behalf of the Apache Tribe and GRIC because

> on its acquisition from Mexico (by the Treaty of Guadalupe-Hidalgo and the Gadsden Purchase) of the territory within which are the lands occupied by . . . the Apache Indians . . . [the United States] became and ever since has remained the guardian of the Indian inhabitants, including the said Pimas and Apaches, and became the owner of the soil of said territory. . . . The United States, upon such acquisition, furthermore became the full sovereign of said territory, having both national and municipal or State sovereignty; and it had plenary power over said lands and waters.

Id. ¶ 7. The Amended Complaint goes on to allege that

> [t]he Apache Indians, at a long time antedating the acquisition by the United States of the lands ceded as aforesaid by Mexico, occupied and possessed and owned, under the Indian title of

> occupancy and possession . . . a large area which included that now reserved to them by the establishment of their reservation known as the San Carlos Indian Reservation.

Id. ¶ 9.

After establishing a chain of title to the lands of the Apache Tribe, the Amended Complaint asserts that the Tribe's right to water is based on theories of "occupancy and possession":

> These Indians are entitled by their rights of occupancy and possession and on account of the reservations thus made, to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila River, excluding the San Carlos River, three thousand (3,000) acres of land, which lands are of a good agricultural character and are susceptible of irrigation from said streams and require irrigation to make them capable of producing crops. . . . The said water rights have a priority, antedating all priorities of white persons and as of the date when the Apache Indians first came to occupy said territory, which was before the United States or Mexico acquired sovereignty thereof, as well as a priority as of the date of said first reservation, which was December 14, 1872.

Id. ¶ 9(b).

The Amended Complaint then sets forth a separate claim, based on prior appropriation, with a priority date of between 1873 and 1901:

> The Indians of said San Carlos Reservation irrigated with the waters of the Gila River, exclusive of the waters of the San Carlos River, through a number of ditches on their reservation aforesaid, from the year 1873 to the year 1900, and since, beginning with 100 acres and increasing to 2,500 acres of land in the year 1900, and on account thereof the United States is entitled, as a mere appropriator, to 32 second-feet of water, continuous flow, with a limitation of 12,800 acre-feet of water per annum, with priorities as of . . . prior to the year 1901.

Id. ¶ 10.

Finally, the Amended Complaint summarizes the water rights the United States is claiming for the Tribe. It states that the federal government has

> reserved and appropriated, acquired, and owns, and is entitled to use for said Indian reservations. . . . 37 1/2 second-feet of water with a limitation of 15,000 acre-feet per annum, and 32 second-feet with a yearly limitation of 12,000 acre-feet . . . with priorities, respectively, as of the year 1846, when the United States obtained sovereignty over that territory, as well as of December 14, 1872.

Id. ¶ 14, 14(b) (emphasis added).

Contrary to the Tribe's argument, the Amended Complaint establishes that the United States was asserting rights in addition to those based on prior appropriation. The Amended Complaint describes the Tribe's rights to water both "reserved and appropriated," *id.* ¶ 14, and claims that such rights derive from both "occupancy and possession," *id.* ¶ 9(b). Indeed, because the Amended Complaint asserts a claim to water from 1846, almost thirty years prior to 1873, the first year in which the Tribe is alleged to have begun irrigation, the United States necessarily must have asserted claims under theories in addition to prior appropriation. *Id.* ¶ 14. This is confirmed by the fact that the Amended Complaint claims that the Tribe is entitled to water with two different priority dates, 1846 and 1872. *Id.*

The Decree also indicates that the Globe Equity litigation adjudicated the totality of the Tribe's water rights in the Gila River mainstem. The Decree's introduction states that

> the plaintiff and the parties defendant . . . have concluded and settled *all issues in this cause* . . . and mutually have agreed . . . that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause, defining and adjudicating *their claims and rights* as against each other in identical form and substance as hereinafter set forth[.]

(Emphasis added.) Article XIII then states:

> [A]ll of the parties to whom rights to water are decreed in this cause . . . are hereby forever

> enjoined and restrained from asserting or claiming—as against any of the parties herein . . .—*any right, title or interest in or to the waters of the Gila River*, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof. . . .

(Emphasis added.) It is difficult to imagine more explicit language indicating that the Decree was intended to resolve all of the parties' claims to the Gila River mainstem.

Based on the language of the Complaint, the Amended Complaint, and the Decree, we conclude that all of the Tribe's water rights, under all theories, to the Gila River mainstem were placed at issue and resolved in the Globe Equity litigation. The Decree precludes all further claims to the mainstem of the Gila River by the parties to the Decree.

IV.

The United States was a party to the Globe Equity litigation, but the Tribe was not. We must therefore next determine whether the United States and the Tribe were in privity in the Globe Equity litigation such that the Tribe is bound by the Decree.[15]

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15. In June of 1935, before the entry of the Decree, the Pima Indian Tribal Council (now GRIC) petitioned for leave to intervene as a party in the Globe Equity litigation; the district court denied the request. The Apache Tribe did not seek to intervene before the entry of the Decree.

Appendix A

We start from the premise that the United States' representation, as trustee, of a tribe in litigation that results in a judgment or decree ordinarily binds that tribe to the decree. The Supreme Court so held in 1912, in a case involving the authority of the federal government to represent the Cherokee Nation in litigation instituted for the return of title to certain Indian lands. *Heckman v. United States*, 224 U.S. 413, 444, 32 S.Ct. 424, 56 L.Ed. 820 (1912). The Court noted that the "efficacy" of the litigation "does not depend upon the Indians' acquiescence" in the litigation. *Id.* at 444-45, 32 S.Ct. 424. Rather, because the United States instituted suit on behalf of the Indians, "[i]t was not necessary to make the [ ] grantors parties, for the government was in court on their behalf." *Id.* at 445, 32 S.Ct. 424. The resulting decree obtained by the Government in the litigation "bind[s] not only the United States, but the Indians whom it represents in the litigation." *Id.* at 445-46, 32 S.Ct. 424.

Similarly, in *Arizona v. California*, the Supreme Court noted that the "United States' action as [the Tribes'] representative w[ould] bind the Tribes to any judgment" entered in the litigation. 460 U.S. 605, 615, 103 S.Ct. 1382, 75 L.Ed.2d 318 (1983) (citing *Heckman, 224 U.S. at 444-45, 32 S.Ct. 424).* The Court noted that, absent certain specific language included in the decree in that case, "[t]here is no question that if these claims [currently asserted by the Tribe] were presented in a different proceeding, a court would be without power to reopen the matter due to the operation of res judicata." *Id.* at 617, 103 S.Ct. 1382.

Appendix A

A.

The Tribe nonetheless argues that the United States lacked authority to represent it in the Globe Equity litigation. First, the Tribe asserts that "the United States lacked any authority from Congress to represent the Apache Tribe in [the] Globe Equity [litigation] ··· which would preclude the application of res judicata."

This argument fails. In 1893, Congress enacted legislation specifically providing that "[i]n all States and Territories where there are reservations or allotted Indians the United States District Attorney shall represent them in all suits at law and in equity." Act of Mar. 3, 1893, ch. 209, § 1, 27 Stat. 631 (codified as amended at 25 U.S.C. § 175 (2001)). Here, the Amended Complaint expressly alleges that the Globe Equity litigation was "instituted at the suggestion of the Secretary of the Interior and by the direction and authority of the Attorney General." Am. Compl. ¶ 3. This allegation makes plain that the United States was proceeding pursuant to authority expressly granted by Congress. *See Heckman*, 224 U.S. at 445-46, 32 S.Ct. 424 ("[I]f the United States . . . is entitled to bring a suit of this character, it must follow that the decree will bind not only the United States, but the Indians whom it represents in the litigation.").

Second, the Tribe argues that the Decree is "without validity as to the Tribe" because there was no "clear congressional authorization to extinguish Apache Tribal water rights, as required by the federal common law and the

Nonintercourse Act, 25 U.S.C. § 177."[16] In support of this argument the Tribe relies primarily on *County of Oneida v. Oneida Indian Nation*, which held that "the Nonintercourse Act[ ] simply 'put into statutory form what was or came to be the accepted rule-that the extinguishment of Indian title required the consent of the United States.' " 470 U.S. 226, 240, 105 S.Ct. 1245, 84 L.Ed.2d 169 (1985) (quoting *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 678, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974)).

The *Oneida* doctrine has no application here. The Decree served to *determine* the scope of the Tribe's water rights, not to *extinguish* them. The Ninth Circuit expressly recognized this distinction between the definition of tribal rights and the extinguishment thereof in *United States v. Ahtanum Irrigation District* ("*Ahtanum I*"), 236 F.2d 321 (9th Cir.1956), and *United States v. Ahtanum Irrigation District* ("*Ahtanum II*"), 330 F.2d 897 (9th Cir.1964). *Ahtanum I* held that the Secretary of the Interior "had the power" to enter into an "arrangement for the apportionment of the Ahtanum waters" under his "general powers of supervision and management" over Indians. 236 F.2d at 338. In *Ahtanum II*, the court clarified that

> it must be plain from our original opinion that if we ha[d] been called upon to uphold the power of

16. In relevant portion, the Nonintercourse Act provides that "[n]o purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." 25 U.S.C. § 177 (2001).

> the Secretary of the Interior *to make a conveyance of the waters of Ahtanum Creek* to these white landowners we would have been confronted with a very serious question indeed-a much more difficult question than that which we decided.

330 F.2d at 903 (emphasis added).

More recently, in *United States v. Truckee-Carson Irrigation District*, a case involving the Pyramid Lake Paiute Tribe's attack on the 1944 Orr Ditch Decree, the Ninth Circuit affirmed the notion that "[t]he authority to represent the Tribe in litigation must be distinguished from the authority to extinguish tribal property interests." 649 F.2d 1286, 1300 (9th Cir.1981), *amended by* 666 F.2d 351 (9th Cir.1982), *aff'd in part and rev'd in part on other grounds sub nom. Nevada v. United States*, 463 U.S. 110, 103 S.Ct. 2906, 77 L.Ed.2d 509 (1983). The court found that section 10 of the Reclamation Act of 1902 did not "confer[ ] on the Secretary [of the Interior] authority to extinguish the Pyramid Lake Tribe's water rights." *Id.* at 1298. Nonetheless, the court held that "an action to quantify reserved water rights was within the authority conferred by section 10 of the Reclamation Act of 1902." *Id.* at 1300.

The 1924 Act "[f]or the continuance of construction work on the San Carlos Federal irrigation project in Arizona" contains language nearly identical to that of section 10 of the Reclamation Act of 1902.[17] Act of June 7, 1924, ch. 288,

17. Section 10 of the Reclamation Act of 1902 provides: "[T]he Secretary of the Interior is hereby authorized to perform any and all (Cont'd)

§ 5, 43 Stat. 475, 476. Thus, while the Government may not have had authority to "extinguish" the Tribe's right to water in the Globe Equity litigation, it possessed the power to "represent [the Tribe's] interests in [the] litigation" in order to "quantify [the Tribe's] reserved water rights." *Truckee-Carson*, 649 F.2d at 1300.[18]

B.

1.

The Tribe next asserts that the United States' representation of the Tribe in the Globe Equity litigation was so inadequate as to prevent the presence of privity between

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(Cont'd)

acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect." Reclamation Act of 1902, ch. 1093, § 10, 32 Stat. 388, 390 (codified in scattered sections of 43 U.S.C.). The 1924 Act provides: "The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect[.]" Act of June 7, 1924, ch. 288, § 5, 43 Stat. 475, 476.

18. The Tribe argues in the alternative that the superior court erred "where it failed to conclude that the issue of lack of authority is a disputed genuine issue[ ] of material fact." The Tribe, however, identifies no such issue of fact. Because the United States had statutory authority to represent the Tribe, we affirm the superior court's determination that there are no genuine issues of material fact precluding a grant of summary judgment against the Tribe on this issue.

the Tribe and the Government.[19] The Tribe relies on § 42(1)(e) of the Second Restatement, which provides, in relevant part, as follows:

> (1) A person is not bound by a judgment for or against a party who purports to represent him if:
>
> . . . .
>
> (e) The representative failed to prosecute or defend the action with due diligence and reasonable prudence, and the opposing party was on notice of facts making that failure apparent.

The Tribe contends that, in the Globe Equity litigation, the Government ignored the Tribe's substantial rights to Gila River water under the *Winters* doctrine, prosecuted the case while under an actual conflict of interest, and staffed the case with attorneys biased against the Tribe. Moreover, the Tribe alleges that "[t]he United States' representation of the Tribe was so grossly deficient as to provide notice to the opposing parties of this fact, and to create no legitimate claim of justifiable reliance by them."

We begin by assuming, without deciding, that the United States' representation of the Tribe in the Globe Equity litigation produced less than desirable results for the Tribe. However, our job in this case is not to re-evaluate the litigation skills and strategies of the Government's attorneys

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19. While the United States does not agree that it provided the Tribe with inadequate representation, it supports the Tribe's request for an evidentiary hearing on the claim.

seventy years after their efforts resulted in the entry of the Decree. Rather, we must apply federal law, giving the Decree the same preclusive effects as would the federal courts. *Cf. Locklin v. Switzer Bros., Inc.*, 335 F.2d 331, 334 (7th Cir.1964) ("[A] 'foreign' federal court will not set aside a judgment, in an independent equitable action, unless the judgment would be set aside on those same grounds by the 'home' federal court.") (citing *Bros. Inc. v. W.E. Grace Mfg. Co.*, 320 F.2d 594, 607 (5th Cir.1963)). Thus, we must determine what preclusive effect the United States District Court for the District of Arizona would provide the Decree.

Our role is analogous to that of a federal court applying state court preclusion principles to a previous state court judgment. *See* U.S. Const. art. IV, § 1; 28 U.S.C. § 1738 (1994); *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985) (" 'It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken.' ") (quoting *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481-82, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982)). As the Second Restatement points out, "[i]t has long been established that the judgments of the federal courts are to be accorded full faith and credit when a question of their recognition arises in a state court or in another federal court." Second Restatement § 87 cmt. a.

2.

The Supreme Court has never expressly held that the Government's representation of a tribe can be so inadequate as to remove privity. The Court, however, has twice rejected similar arguments in cases analogous to this one. In *Arizona v. California*, the Court held that the Government's concurrent representation of five tribes in litigation involving the Colorado River did not "authorize relitigation of their reserved rights." 460 U.S. at 626, 103 S.Ct. 1382. The Court held that

> [a] breach of the United States' duty to represent the Tribes' interests is not demonstrated merely by showing that the government erred in its calculation of irrigable acreage, whether by an oversight or, as viewed in retrospect, by an unnecessarily cautious litigation strategy. . . . [A] claim of inadequate representation cannot be supported on this record.

Id. at 628 n. 21, 103 S.Ct. 1382.

The Court reached a similar result in *Nevada*, holding that the Paiute Tribe was bound by the Government's representation in the Orr Ditch litigation:

> This Court left little room for an argument to the contrary in *Heckman v. United States*, where it plainly said that "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the

> jurisdiction of its courts . . . these wards should themselves be permitted to relitigate the question." We reaffirm that principle now.

463 U.S. at 135, 103 S.Ct. 2906 (internal citations omitted, alteration in original).

The Tribe argues that this case is factually distinguishable from the Supreme Court precedents and that the Court would apply § 42(1)(e) of the Second Restatement and find an absence of privity with respect to the Globe Equity Decree. We need not today resolve that issue, however, because we conclude that the doctrine of comity compels us to refrain from addressing the Tribe's arguments.

3.

Ordinarily, relief from a judgment "must be obtained by means of a motion for that purpose in the court that rendered the judgment unless relief may be obtained more fully, conveniently, or appropriately by some other procedure." Second Restatement § 78. In the federal courts, such a motion is governed by Federal Rule of Civil Procedure 60(b).[20]

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20. Rule 60(b) provides:

> Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

(Cont'd)

Appendix A

Consent decrees are subject to the requirements of Rule 60(b). *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992).

Under Rule 60(b), a court may also "entertain an independent action to relieve a party from a judgment. . . ." As a general matter, that action "may or may not be begun in

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(Cont'd)

> discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

the court which rendered the judgment." Fed.R.Civ.P. 60(b) advisory committee's note (1946 Amendment, Subdivision (b)); *see also Locklin*, 335 F.2d at 334 (stating that an "independent equitable action may be maintained in any court exercising equitable jurisdiction").

However, even if Rule 60(b) facially grants us the power to consider the Tribe's privity arguments in an "independent" attack on the Decree, the doctrine of comity counsels to the contrary. "The principle [of comity] is that a court should not assume to disturb another court's disposition of a controversy unless there are good reasons for doing so." Second Restatement § 78 cmt. a.

Lapin v. Shulton, Inc., 333 F.2d 169 (9th Cir.1964), illustrates the application of the comity doctrine. In that case, the Ninth Circuit affirmed a district court's refusal to entertain an action challenging an injunction issued by the United States District Court for the District of Minnesota on the grounds "that changed circumstances had rendered inequitable the prospective application of the decree." *Id.* at 170. The court held that

> for a nonissuing court to entertain an action for such relief would be seriously to interfere with, and substantially to usurp, the inherent power of the issuing court . . . to supervise its continuing decree by determining from time to time whether and how the decree should be supplemented, modified or discontinued in order properly to adapt it to new or changing circumstances.

Id. at 172. The Ninth Circuit found that it "need not go so far as to hold that these considerations and this interpretation of Rule 60(b) deprive all courts other than the issuing court of jurisdiction in such a case as this." *Id.* Nonetheless, "considerations of comity and [the] orderly administration of justice demand that the nonrendering court should decline jurisdiction of such an action and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there." *Id.*

Similarly, in *Treadaway v. Academy of Motion Picture Arts & Sciences*, the Ninth Circuit, following *Lapin*, held that a district court could "refuse entirely to entertain [an] action if relief in a more appropriate forum-the rendering court-were available." 783 F.2d 1418, 1421 (9th Cir.1986) (footnote omitted). In that case, the plaintiff brought an independent action under Rule 60(b) in a district court challenging a bankruptcy court's sale of certain films, photographs, and scripts. *Id.* at 1419-20. In affirming the district court's refusal to consider the action, the Ninth Circuit confirmed that *Lapin*"was germane to independent attacks on all types of final judgments." *Id.* at 1422. The court emphasized that "[w]hen a court entertains an independent action for relief from the final order of another court, it interferes with and usurps the power of the rendering court just as much as it would if it were reviewing that court's equitable decree." *Id.*

Because "discretion requires a [federal] district court to decline to hear a claim seeking relief from a judgment entered by a coordinate court, at least when it is apparent that the parties can seek redress in the issuing court," *Feller v. Brock*,

802 F.2d 722, 728 (4th Cir.1986), this Court should ordinarily decline to entertain an independent action challenging the validity of a federal decree. Such comity to the federal courts is particularly appropriate here.

The issuing federal court-the United States District Court for the District of Arizona-expressly retained jurisdiction over the interpretation and enforcement of the Decree in 1935. That court continues to actively "review the actions of the Water Commissioner and to enforce the Decree." *United States v. Gila Valley Irrigation Dist.* ("*GVID III*"), 961 F.2d 1432, 1434 (9th Cir.1992). The Tribe is a party to the federal litigation, having been granted permission to intervene in 1990.

In its motion to intervene, the Tribe made clear that none of the allegations in its complaint in intervention sought "to vacate the Decree, or re-litigate issues." Thus, in federal court, the Tribe has declared that it "does not seek to litigate rights to additional Gila River water in this matter, and [that] no allegations have been made in the proposed Complaint in Intervention regarding *Winters* water rights."

The limited nature of the Tribe's intervention in the federal litigation does not, of course, establish its acquiescence in the Decree's validity. It is clear, however, that the Tribe has consciously declined to adjudicate its "inadequate representation" claim in the forum responsible for issuing, interpreting, and enforcing the Decree. Notions of comity would be seriously undermined if we were to permit the Tribe to assert the very arguments in this Court that it has explicitly pretermitted in the federal court.

Appendix A

The Tribe presumably moved to intervene in the federal litigation only for limited purposes because the district court had already intimated its view of a tribe's ability to challenge both the validity of the Decree and the adequacy of the United States' representation in the Globe Equity litigation. In 1983, GRIC "successfully moved to intervene as a plaintiff" in the federal litigation interpreting the Decree. *GVID III*, 961 F.2d at 1434. In granting GRIC's motion, however, the district court prohibited GRIC from intervening "for the purpose of vacating the Decree or relitigating the issues resolved by the Decree." The court noted that GRIC's motion to intervene was filed forty-seven years after the entry of the Decree:

> To the extent GRIC seeks to vacate the Decree or to relitigate the issues the Decree resolves, it is hard to imagine a more untimely motion. The prejudice to the parties that is posed by GRIC's avowed intent at this late date to dismantle the Decree is manifest. Water is lifeblood to the land affected by the Decree and the Decree apportions much of the available water. To permit an attack now on the Decree would cast the apportionment of Gila River water into a legal limbo, perhaps of many years duration, that would be detrimental to the interests of all the parties to the Decree.

In addition, the district court expressly refused to consider GRIC's argument that the United States' representation of GRIC in the Globe Equity litigation had been inadequate, stating that it was "too late in the day for GRIC now to complain of its representation back in 1935." GRIC's

intervention was thus made "subject to the condition that any complaint that GRIC files in the action must seek only to enforce the Decree and not to vacate the Decree or to relitigate issues already determined by the Decree."

The Tribe argues that the district court's 1983 ruling with respect to GRIC's intervention establishes that the Tribe cannot obtain relief in the court that issued the Decree, and therefore the Tribe should be allowed to pursue such relief here. But we take precisely the opposite message from the 1983 ruling. Our task, after all, is to accord the Decree the same preclusive effect as would the issuing federal court. The 1983 ruling tells us that the issuing court would not entertain an attack on the Decree, despite its facial power under Rule 60(b) to do so, because of untimeliness. Comity requires that we respect that determination; a contrary determination would reward a party who had waited too long to attack a judgment in federal court by providing a state forum.

Had the Tribe believed that the district court erred in refusing to allow GRIC to intervene to attack the Decree, it could have sought to attack the Decree in its 1990 motion to intervene and then sought federal appellate review from any denial thereof. Had it done so, the federal courts could have conclusively addressed the issue. If we were today to consider the Tribe's privity arguments, we would be in effect rewarding its strategic choice to withhold making those arguments in the court that issued the Decree in order to seek a more favorable forum here. The doctrine of comity requires

a different result.[21] We therefore decline to consider the Tribe's attack on the Decree on the basis of absence of privity.[22]

V.

Phelps Dodge, SRP, and Safford, none of whom were parties to the 1935 Decree (the "Nonparties"), argue that they should nonetheless be able to assert the preclusive effect of the Decree against the Tribe and the United States. Ordinarily the application of claim preclusion requires "mutuality"—both the party asserting the preclusive effect of a prior judgment and the party against whom preclusion is asserted must have been parties in the prior litigation. *Nevada*, 463 U.S. at 143, 103 S.Ct. 2906. In certain circumstances, however, "exceptions to the *res judicata* mutuality

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21. We express no opinion as to what other remedies, if any, might be available to the Tribe for the Government's allegedly inadequate representation. *See Arizona v. California*, 460 U.S. at 628 n. 20, 103 S.Ct. 1382 (noting that "in an appropriate case the Tribes' remedy for inadequate representation by the government may lie in the Court of Claims").

22. Arizona law requires that "when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court, the court *shall accept* the determination of such rights and dates of appropriation as found in the prior decree. . . ."A.R.S. § 45-257(B)(1) (emphasis added). Given our conclusion as a matter of federal law that the doctrine of comity prevents us from considering the Tribe's argument that the Decree should not be enforceable against it because of the absence of privity, we need not consider today whether § 45-257(B)(1) also requires the same result as a matter of state law.

requirement have been found necessary. . . ." *Id.* The Supreme Court established such an exception in *Nevada*, holding that the Orr Ditch litigation was "a comprehensive adjudication of water rights intended to settle once and for all the question of how much of the Truckee River each of the litigants was entitled to." *Id.* Because of the scope of the litigation, "[n]onparties [including] subsequent appropriators . . . have relied just as much on the *Orr Ditch* decree in participating in the development of western Nevada as have the parties to that case." *Id.* at 144, 103 S.Ct. 2906. Under those circumstances, the Court recognized a limited exception to the requirement of mutuality for claim preclusion, enabling those later appropriators to assert the preclusive effect of the decree against parties to the decree.

In this case, the Nonparties argue that the Globe Equity litigation was sufficiently comprehensive to qualify for the *Nevada* mutuality exception; they also claim that they have relied on the Decree in the same manner as did the later appropriators in *Nevada* and should be able to use the Decree's preclusive effect against parties to the Decree.[23] In opposition, the Tribe and the United States argue that because the United States "expressly limited the Globe Equity proceedings to a defined segment of the Gila River exclusive of tributaries," the Globe Equity litigation was not sufficiently "comprehensive" to qualify for the mutuality exception

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23. As parties to the Decree, or successors in interest to parties to the Decree, ASARCO, GVID, FID, and SCIDD are entitled to assert the preclusive effect of the Decree and need not rely on the *Nevada* mutuality exception to claim preclusion.

outlined in *Nevada.*[24] In addition, the United States argues that because the Decree grants "compromise" rights in addition to establishing priorities under the doctrine of prior appropriation, subsequent appropriators would not be justified in relying on the Decree when appropriating water, and are therefore not entitled to assert the preclusive effect of the Decree.

We have concluded above that the Decree was intended to resolve all claims to the Gila River mainstem. The United States included as defendants in the Globe Equity litigation all those with claims to the mainstem of the Gila River, and the Decree includes all water rights theories that the parties could have asserted. Thus, as to the mainstem of the Gila River, the Decree is comprehensive. In addition, given the long history of the Decree, it is clear that those not party to the Decree have in fact relied upon it in the same manner as the later appropriators in *Nevada.* With respect to the Gila River mainstem, the *Nevada* exception to mutuality applies and those who were not party to the Decree are entitled to assert its preclusive effects against parties to the Decree and their successors.

None of the Nonparties, however, seek to assert the preclusive effect of the Decree as to the Gila River mainstem. Rather, the Nonparties claim that under the *Nevada* mutuality exception they are entitled to assert the preclusive effect of the Decree as to waters of the Gila River *tributaries.* Because we have determined that the Decree itself precludes only

24. GRIC joins the Tribe and the United States in this argument, but focuses its brief on refuting the ability of Phelps Dodge in particular to assert the preclusive effects of the Decree.

additional claims to the mainstem, any assertion of preclusive effect by the Nonparties with respect to waters of the tributaries fails.

VI.

The Gila River general stream adjudication consists of a series of cases organized by watershed and by petitioner. The case we today consider, denominated W1-206, involves claims by the Apache Tribe and the United States on the Tribe's behalf. Case W1-203 involves claims by GRIC and the United States on GRIC's behalf.

Before issuing its order in this case, the superior court considered similar summary judgment motions in W1-203. On March 7, 2002, the superior court issued an order in W1-203, granting summary judgment to those parties who had filed motions arguing that the Decree precluded GRIC or the United States on GRIC's behalf from asserting additional claims for water in the Gila River. The court concluded that "neither GRIC nor the United States on behalf of GRIC shall be entitled to claim water rights relating to the mainstem of the Gila River . . . except to the extent such rights were granted to them by the *Globe Equity Decree.*"

When it issued its May 17, 2002 order in case W1-206, the superior court stated that it "ha[d] considered all filed memoranda and arguments of counsel and ha[d] otherwise become fully advised as to the issues presented." The court then

> [g]rant[ed] the motions for summary judgment filed by GRIC, SCAT, Safford, GVID and FID

> jointly, SCIDD, Phelps Dodge, and ASARCO to the extent that these motions seek a determination that preclusive effect of the *Globe Equity Decree* is applicable to the parties consistent with the findings and conclusions set forth in this court's Amended Order . . . that was entered in contested case No. W1-203.

The Apache Tribe argues that the superior court "committed clear error by adopting the findings and conclusions in the Amended Order in W1-203 for GRIC as the sole basis for granting summary judgment against the Tribe in W1-206." According to the Tribe, a determination of the preclusiveness of the Decree required "**separate** examination of the unique factual history involving these two very different Indian Tribes . . . and . . . separate consideration of the different legal arguments made by the Tribe and GRIC on summary judgment. . . ."

We have today determined the preclusive effects of the Decree as a matter of law based on our interpretation of the Decree and the filings in the Globe Equity litigation leading to the Decree. This legal determination of the Decree's preclusive effects makes any factual differences between cases W1-203 and W1-206 irrelevant. Because our opinion does not rely upon any factual determinations, but rather only on the record in the Globe Equity litigation, the Tribe's arguments about the form of the order below do not affect our conclusions.[25]

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25. One of the issues on which we granted review was whether the superior court erred in failing to determine that the Decree or

(Cont'd)

VII.

In summary, for the reasons stated above, we hold that the Globe Equity Decree precludes the Apache Tribe and the United States on the Tribe's behalf from asserting claims to water from the mainstem of the Gila River beyond those rights granted in the Decree, but that it does not preclude claims to the tributaries of the Gila River. (Tribe's issue 1.) This holding also addresses the single issue raised by Phelps Dodge in its cross-appeal. We hold that the superior court's reference in case W1-206 to its order in W1-203 was not reversible error. (Tribe's issue 2.) We decline on grounds of comity to address the Tribe's argument that the Decree is not entitled to preclusive effect because of an absence of privity. (Tribe's issue 3.) We hold that the Government was vested with the authority to represent the Tribe in the Globe Equity litigation and to litigate the extent of the Tribe's water rights. (Tribe's issue 4.) We vacate our order granting interlocutory review of the effect of the Landowners' Agreements on any claims by GRIC to the San Carlos River. (Tribe's issue 5.) We hold that the *Nevada* exception allows non-parties to the Decree to assert its preclusive effect, but only as to waters in the Gila River mainstem. (Tribe's issue 6.)

(Cont'd)

the Landowners' Agreements of 1924 specifically preclude GRIC and the United States on behalf of GRIC from claiming any rights to the San Carlos River in the Gila River general stream adjudication. *See supra* note 5. Because this issue would be more appropriately addressed in any review of the summary judgment order in W1-203 by GRIC, we vacate our order granting review of this issue as improvidently granted.

The May 17, 2002 order of the superior court is therefore affirmed to the extent that it holds that the Decree has preclusive effect with respect to claims by the Tribe and the United States to waters in the Gila River mainstem. The order is also affirmed to the extent that it concludes that the Decree has no preclusive effect with respect to the tributaries of the Gila River. This case is remanded to the superior court for further proceedings consistent with this opinion.

Andrew D. Hurwitz, Justice

CONCURRING:

Ruth V. McGregor, Chief Justice

Rebecca White Berch, Vice Chief Justice

Michael D. Ryan, Justice

A. John Pelander, Judge*

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* Pursuant to Article 6, Section 3 of the Arizona Constitution, the Honorable A. John Pelander, Chief Judge of the Arizona Court of Appeals, Division Two, was designated to sit in this matter.

APPENDIX B — ORDER OF THE SUPREME COURT OF ARIZONA DENYING MOTION FOR RECONSIDERATION FILED MAY 3, 2006

SUPREME COURT OF ARIZONA

No. WC-02-0003-IR

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

May 3, 2006

ORDER DENYING MOTION FOR RECONSIDERATION

ANDREW D. HURWITZ, Justice.

We issued our opinion in this matter on February 9, 2006. *In re the General Adjudication of All Rights to Use Water in the Gila River System & Source*, 212 Ariz. 64, 127 P.3d 882 (2006). On February 27, 2006, the San Carlos Apache Tribe ("Tribe") filed a motion for reconsideration. That motion was untimely under ARCAP 22(b).[1] We have nonetheless decided

1. A motion for reconsideration must be filed "within fifteen days after the filing of a decision by the appellate court." ARCAP 22(b). Because this Court issued its opinion on February 9, the last day to file a motion was February 24. The Tribe's motion was apparently mailed to the clerk of this Court on February 24, but ARCAP 4(a) provides that only briefs and appendices, not motions, are considered filed on the day of mailing.

to suspend the time limits in ARCAP 22(b) and consider the merits of the motion. See ARCAP 3 (providing that an appellate court may "suspend the requirements or provisions of any of these rules in a particular case" and that "[t]hese rules shall be liberally construed in the furtherance of justice").

The motion for reconsideration is directed only to that portion of our opinion discussing the Tribe's claims that the Globe Equity Decree ("Decree") should be given no preclusive effect because of the United States' allegedly inadequate representation of the Tribe. *Gila River System*, 212 Ariz. at 79 ¶¶ 56-73, 127 P.3d at 897-901. We declined under the doctrine of comity to consider that claim. *Id.* at 81-83 ¶¶ 64-73, 127 P.3d at 899-901. The Tribe now argues that the doctrine of comity is inapplicable because the Globe Equity court lacked jurisdiction to consider a challenge to the Decree based upon inadequate representation by the United States. In particular, the Tribe argues that the federal district court was deprived of such jurisdiction by the McCarran Amendment, 66 Stat. 560, 43 U.S.C. § 666 (1952), and by the opinion of the Ninth Circuit in *Northern Cheyenne Tribe v. Adsit*, 721 F.2d 1187 (9th Cir.1983).

I.

The McCarran Amendment provides in relevant part that, notwithstanding sovereign immunity, the United States may be joined as a party in state court general water adjudications and bound by the judgments of state courts. 43 U.S.C.

Appendix B

§ 666(a).[2] The Supreme Court of the United States has made plain, however, that the Amendment merely gave "consent

2. The McCarran Amendment, also called the McCarran Water Rights Suit Act, provides:

> (a) Joinder of United States as defendant; costs Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.
>
> (b) Service of summons
>
> Summons or other process in any such suit shall be served upon the Attorney General or his designated representative.
>
> (c) Joinder in suits involving use of interstate streams by State
>
> Nothing in this section shall be construed as authorizing the joinder of the United States in any suit or controversy in the Supreme Court of the United States involving the right of States to the use of the water of any interstate stream.

43 U.S.C. § 666.

to jurisdiction in the state courts concurrent with jurisdiction in the federal courts over controversies involving federal rights to the use of water," *Colorado River Water Conservation District v. United States* (" *Colorado River* "), 424 U.S. 800, 809, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976), and "in no way diminished federal-district-court jurisdiction," *id.*

Colorado River, while rejecting the notion that the McCarran Amendment deprived federal courts of jurisdiction in general stream adjudications, also held that under the circumstances of the controversy before it, the district court should have dismissed the case to allow a Colorado state general stream adjudication to proceed. *Id.* at 817-20, 96 S.Ct. 1236. That holding received extensive attention in an action commenced by the San Carlos Apache Tribe in 1979 in the United States District Court for the District of Arizona (the "San Carlos federal litigation"). The Tribe's complaint sought an adjudication of its federal water rights in several water systems.[3]

The district court dismissed the San Carlos federal litigation, relying upon *Colorado River* and the pendency of various Arizona state court general stream adjudications. *In re Determination of Conflicting Rights to Use of Water from Salt River Above Granite Reef Dam*, 484 F.Supp. 778 (D.Ariz.1980). The Ninth Circuit reversed. *San Carlos*

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3. The San Carlos federal litigation was a distinct suit seeking a determination of the Tribe's water rights under federal law, not an action seeking to amend the Globe Equity Decree and not an "independent action" under Rule 60(b) requesting relief from the Decree.

Appendix B

Apache Tribe of Ariz. v. Arizona, 668 F.2d 1093 (9th Cir.1982). The Supreme Court granted certiorari and in turn reversed the Ninth Circuit. *Arizona v. San Carlos Apache Tribe of Arizona* (" *San Carlos* "), 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983).

San Carlos began from the premise that " *Colorado River*, of course, does not require that a federal water suit must always be dismissed or stayed in deference to a concurrent and adequate comprehensive state adjudication." *Id.* at 569, 103 S.Ct. 3201. The Court, however, found that a number of factors counseled against the district court proceeding with the San Carlos federal litigation, particularly the relative infancy of the federal litigation, which had not proceeded beyond the motion to dismiss stage. *Id.* at 570-71, 103 S.Ct. 3201. The Court left open the question of whether the San Carlos federal litigation should be stayed pending the Arizona general stream adjudications or dismissed without prejudice. *Id.* at 570 n. 21, 103 S.Ct. 3201.

On remand, the Ninth Circuit determined that the San Carlos federal litigation was

> "well enough along so that dismissal would itself constitute a waste of judicial resources and an invitation to duplicative effort." A stay of the federal action[ ] would be preferable to a dismissal here so the federal forum would most readily be available if warranted by a "significant change of circumstances."

Northern Cheyenne Tribe,[4] 721 F.2d at 1188 (quoting *San Carlos*, 463 U.S. at 569, 570 n. 21, 103 S.Ct. 3201) (internal citation and alteration omitted). The court therefore ordered the San Carlos federal litigation be stayed. *Id.* at 1189.

II.

The Tribe's motion for reconsideration argues that the McCarran Amendment and the Ninth Circuit stay of the San Carlos federal litigation deprive the district court of the ability to consider any attack on the Globe Equity Decree because of alleged ineffective representation by the United States. The argument does not withstand analysis.

The McCarran Amendment did not itself deprive the Globe Equity court of jurisdiction to enforce and interpret the 1935 consent decree. *Colorado River* and *San Carlos* each stress that the Amendment *confers* state court jurisdiction, rather than *withdrawing* federal jurisdiction. *See San Carlos*, 463 U.S. at 559-60, 570-71, 103 S.Ct. 3201; *Colorado River*, 424 U.S. at 809, 96 S.Ct. 1236. Indeed, even after *Colorado River* and *San Carlos*, the Globe Equity court has continued to actively "review the actions of the Water

4. In *San Carlos*, the Supreme Court consolidated and reversed three decisions of the Ninth Circuit, including its decision in the San Carlos federal litigation. *See* 463 U.S. 545, 103 S.Ct. 3201 (consolidating *San Carlos Apache v. State of Arizona*, 668 F.2d 1093 (9th Cir.1982), *Northern Cheyenne Tribe v. Adsit*, 668 F.2d 1080 (9th Cir.1982), and *Navajo Nation v. United States*, 668 F.2d 1100 (9th Cir.1982)). On remand, the Ninth Circuit addressed all three cases in its opinion in *Northern Cheyenne Tribe*. *See* 721 F.2d at 1188.

Commissioner and to enforce the Decree." *United States v. Gila Valley Irrigation Dist.*, 961 F.2d 1432, 1434 (9th Cir.1992); *see also San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1098-99 (9th Cir.2005) (rejecting the Tribe's argument that it may bring a claim under the National Historic Preservation Act alleging that the current implementation of the Decree violates that Act). In fact, the Tribe itself recently sought to enforce rights granted to it in the Decree in the Globe Equity court. *See San Carlos Apache Tribe v. United States*, 272 F.Supp.2d 860, 867 (D.Ariz.2003) ("Plaintiffs allege that there has been a material change in circumstances that justifies modification of the comprehensive management provisions for operating the [San Carlos] Reservoir that are set out in the Gila River Decree."), *aff'd*, 417 F.3d 1091 (2005), and 144 Fed.Appx. 635 (2005) (unpublished opinion).

Nor does *San Carlos* or *Northern Cheyenne Tribe* compel a different result. These cases involve the stay of the embryonic *San Carlos federal litigation*, not the long-standing Globe Equity litigation. The Globe Equity litigation had been under way for almost 60 years before the Ninth Circuit stayed the San Carlos federal litigation in 1983 and has proceeded actively in the almost quarter-century since. Thus, there is simply no warrant for concluding that the Globe Equity court has somehow been deprived by the McCarran Amendment, or by the cases interpreting the Amendment, of the ability to consider attacks on the validity of the 1935 Decree.

Appendix B

III.

In short, the Tribe's contention that the doctrine of comity is inapplicable because the Globe Equity court lacked the ability to consider the Tribe's attacks on the 1935 Decree is not well-founded. The Tribe's motion for reconsideration is denied.

Dated this 3rd day of May, 2006.

Andrew D. Hurwitz, Justice

CONCURRING:

Ruth V. McGregor, Chief Justice

Rebecca White Berch, Vice Chief Justice

Michael D. Ryan, Justice

A. John Pelander, Judge[5]

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5. Pursuant to Article 6, Section 3 of the Arizona Constitution, the Honorable A. John Pelander, Chief Judge of the Arizona Court of Appeals, Division Two, was designated to sit in this matter.

APPENDIX C — ORDER OF THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA DATED MAY 17, 2002

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

Contested Case No. W1-206

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

IN RE THE PRECLUSIVE EFFECT OF THE *GLOBE EQUITY NO. 59 DECREE* ON SPECIFIED PARTIES

ORDER

Hearings were held on April 23, 2002, on the requests for summary disposition and related motions pending in the above-referenced docket. Motions for summary judgment were filed by the Gila River Indian Community ("GRIC"); San Carlos Apache Tribe ("SCAT"); City of Safford ("Safford"); Gila Valley Irrigation District ("GVID") and Franklin Irrigation District ("FID") jointly; San Carlos Irrigation and Drainage District ("SCIDD"); Phelps Dodge

Corporation ("Phelps Dodge"); and ASARCO Incorporated ("ASARCO").

GRIC filed a motion to withdraw its summary judgment request with respect to Phelps Dodge. GRIC and Safford filed motions related to the scope of this contested case in terms of parties. SCAT and both the Buckeye Irrigation Company and the Buckeye Water Conservation and Drainage District ("the Buckeye organizations") filed a stipulation regarding the preclusive effect of a prior settlement agreement among these parties and a subsequent judgment and decree.

At the hearing, GVID and FID filed a Motion to Strike SCAT's Notice of Errata and "Corrected" Statement of Facts.

The court has considered all filed memoranda and arguments of counsel and has otherwise become fully advised as to the issues presented.

IT IS ORDERED:

1. Granting GRIC's Motion to Remove Phelps Dodge as Clerk of the Court a Named Party from GRIC's Motion for Partial Summary Judgment.

2. Directing SCAT and the Buckeye organizations to submit a joint form of order memorializing the terms of their stipulation filed in this matter on June 20, 2001.

3. Rescinding this court's order dated June 27, 2001, denying Safford's Motion to Strike GRIC's Motion for Partial Summary Judgment. The court has now

considered the merits of the legal issues raised by Safford's motion.

4. Granting Safford's Motion to Strike GRIC's Motion for Partial Summary Judgment to the extent that GRIC's motion seeks relief as to claimants who are not parties in this contested case. Special Master Thorson specified the affected parties at the commencement of Contested Case No. W1-206, and the other claimants named in GRIC's motion did not have an opportunity to participate in the matter. Accordingly, due process concerns dictate that the court grant the Motion to Strike.

5. Denying GRIC's alternative motion to include in this contested case other parties, in addition to SCAT, GVID, and FID, who are in privity with owners or are claimants of water rights decreed in *United States v. Gila Valley Irr. Dist., Globe Equity No. 59* (D. Ariz. 1935) (the "*Globe Equity Decree*").

6. Granting the motions for summary judgment filed by GRIC, SCAT, Safford, GVID and FID jointly, SCIDD, Phelps Dodge, and ASARCO to the extent that these motions seek a determination that preclusive effect of the *Globe Equity Decree is* applicable to the parties consistent with the findings and conclusions set forth in this court's Amended Order dated February 20, 2002, that was entered in Contested Case No. W1-203.

7. Denying ASARCO's Motion for Summary Judgment on the issue of whether ASARCO's water right relating to the San Carlos River, decreed to ASARCO's predecessor

in interest in the *Globe Equity Decree*, precludes SCAT from claiming a water right to the San Carlos River in the Gila River Adjudication. Genuine disputes regarding material facts preclude granting summary judgment on the claims to the San Carlos River asserted in the Gila River Adjudication by ASARCO and SCAT.

8. Denying the Motion for GVID and FID to Strike SCAT's Notice of Errata and "Corrected" Statement of Facts.

IT IS FURTHER ORDERED the Arizona Department of Water Resources shall prepare subsequent hydrographic survey reports in accordance with the determinations made in this Order.

s/ Eddward P. Ballinger, Jr.
The Honorable Eddward P. Ballinger, Jr.
Judge of the Superior Court

APPENDIX D — AMENDED ORDER OF THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA DATED AND FILED MARCH 7, 2002

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

Contested Case Nos.
W-1-203 (Docket No. 118-119, 202, 206, 209-214 and 224-225)

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

AMENDED ORDER

The Order dated February 20, 2002 is amended, *nunc pro tunc*, to provide as follows:

Hearings were held on November 27 and 28, 2001, on the requests for summary disposition pending in the above-referenced dockets. These motions were filed by the Gila Valley Irrigation District ("GVID"), Franklin Irrigation District ("FID"), San Carlos Irrigation and Drainage District ("SCIDD"), Salt River Project ("SRP"), the City of Tempe

("Tempe"), the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Tribe (the "Apache Tribes" collectively), ASARCO Incorporated ("ASARCO"), Buckeye Irrigation Company ("Buckeye") and Arlington Canal Company ("Arlington"), and sought relief against the Gila River Indian Community ("GRIC") and the United States (sometimes referred to as the "Government"). These matters were previously referred to Special Master Thorson on February 1, 2000 and July 14, 2000. After permitting oral argument the Special Master filed two reports, which were dated, respectively, June 30, 2000 ("SM June Rep.") and December 28, 2000 ("SM Dec. Rep.") and contained the Special Master's factual findings ("FOF"), legal conclusions ("COL") and recommendations. The Clerk of the Court gave proper notice of the filing of these reports, and the parties were permitted to submit their comments and objections. This court has considered all filed memoranda, arguments of counsel, findings and conclusions of the Special Master, and has otherwise become fully advised as to the issues presented. This Order shall constitute the court's findings of fact and conclusions of law with respect to the pending motions in accordance with Ariz. R. Civ. P. 52.

I. Initial Considerations

A. Scope of Inquiry

Many of the motions presented assert that GRIC's claims are precluded or limited due to operation of legal principles such as *res judicata*, various forms of estoppel (including collateral, statutory, "quasi", equitable, and judicial estoppel), and general principles of contract law. If applicable, these

precepts summarily resolve disputes and, as the Special Master recognized, "when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court . . . ," this court, "shall accept the determination of such rights and dates of appropriation as found in the prior decree unless such rights have been abandoned." SM June Rep., p.12 (citing Ariz. Rev. Stat. §45-257 (B)(1)). GRIC and the United States point out that proper consideration of these maxims requires that the court consider whether, and when, each principle can be applied to GRIC and/or the Government. If generally applicable, the court must decide if the requisites for successful assertion of each form of preclusion have been met with respect to each motion. But, prior to addressing these issues, the court must address the United States' contention that this court lacks jurisdiction to consider matters previously considered by federal courts.

B. Jurisdiction

Various federal forums have asserted, and in at least one instance continue to exercise, jurisdiction over issues that are the subject of the motions currently before this court. For example, one motion centers on the question of whether the decree relating to rights to water flow from the upper mainstem of the Gila River that was entered in *United States v. Gila Valley Irr. Dist.*, Globe Equity No. 59 (D. Ariz. 1935) (the "*Globe Equity Decree*" or the "*Decree*") triggers issue and/or claim preclusion with respect to claims of GRIC and the Government in this adjudication. Because the federal district court retained exclusive jurisdiction to interpret and enforce the *Globe Equity Decree*, the United States argues that any review of the *Decree's* terms would necessarily be

interpretive, and thus outside the scope of this court's jurisdiction. This argument rests primarily on the Government's interpretation of the Ninth Circuit Court of Appeals' holding in *United States v. Alpine Land & Reservoir Company*, 174 F.3d 1007 (9th Cir. 1999). In *Alpine*, the court of appeals upheld the continuing and exclusive jurisdiction of a federal district court to interpret and apply provisions contained in previously issued decrees. The court held federal jurisdiction to be exclusive based both on the explicit language contained in the decrees and, more importantly, on the fact that the rights declared in the decrees were determined in what were, in effect, *in rem* proceedings:

> The reason why exclusivity is inferred is that it would make no sense for the district court to retain jurisdiction to interpret and apply its own judgment to the future conduct contemplated by the judgment, yet have a state court construing what the federal court meant in the judgment. Such and arrangement would potentially frustrate the federal district court's purpose.

Alpine, 174 F.3d 1013 (citing *Flanagan v. Arnaiz*, 143 F.3d 540, 545 (9th Cir. 1998)).

While acknowledging the principles upon which the *Alpine* decision rests, this court does not believe they apply to this adjudication. The United States fails to distinguish situations in which a state court recognizes the validity and preclusive effect of judgments as opposed to instances in which it purports to interpret or enforce these edicts. That the former undertaking is permitted is not subject to question.

Appendix D

The decision of the United States Supreme Court in *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 118 S. Ct. 921 (1998), authorizes state courts to consider and rule on the extent of issue and claim preclusion that accompanies federal judgments. Justice Ginsburg wrote "[C]laim preclusion by reason of a prior federal judgment is a . . . defensive plea. . . . Such a defense is properly made in the state proceedings, and the state courts' disposition of it is subject to [The Supreme] Court's ultimate review." 522 U.S. 478, 118 S. Ct. 926.

Adopting the Government's view of jurisdiction could result in this court ignoring binding resolutions regarding issues arising in this adjudication, thereby permitting awards of water rights that are in conflict with these determinations. For these reasons, the court concludes that principles of issue and claim preclusion do not cause this court to invade the exclusive jurisdiction of the federal courts. When properly applied, acknowledging the binding effect of prior decrees promotes judicial economy and assists the court in complying with state and federal law mandates.

II. Resolution of Pending Motions

The history relating how the motions before the court arose is accurately and adequately described in Special Master Thorson's reports, portions of which are incorporated as part of this Order.

Appendix D

A. Motions concerning the preclusive effect of the Globe Equity Decree

[Docket Nos. 118 and 119]

Asserting various theories, GVID, FID, SCIDD, SRP[1], Tempe, and the Apache Tribes have each filed motions claiming that the *Globe Equity Decree* limits[2] water rights asserted by, or on behalf of, GRIC.

The *Globe Equity Decree* concluded litigation initiated by the United States for the benefit of, among others, Indian tribes living on the Gila River Indian Reservation. A number of the current movants (or their predecessors in interest) were defendants in the case, There is no dispute that the *Decree* purported to resolve approximately three thousand water right diversions. The Special Master characterized the *Decree* as a lengthy, convoluted edict that has spawned numerous federal court actions relating to administration and interpretation of its terms.

As already noted, Ariz. Rev. Stat. §45-257 requires that this court generally accept prior judicial determinations as to the right to use water. Movants argue that this statute and the doctrine of *res judicata* each requires that the court recognize that the *Globe Equity Decree* "resolved all claims of the United States, as trustee for the Indians of the Gila

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1. "SRP" also refers to the Salt River Valley Water Users' Association.

2. Additional parties joined in this and other motions addressed in this Order.

River Indian Reservation, to water from the Gila River for use on the Gila River Indian Reservation."[3] SM June Rep., p.12. GRIC and the United States argue that the law does not permit the Decree to serve as the basis for a *res judicata* bar, that the elements necessary for this affirmative defense are not present, and that, in any event, disputes regarding material facts preclude summary disposition.[4]

"Simply put, the doctrine of res judicata provides that when a final judgement has been entered on the merits of a

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3. The motions seek to limit claims relating both to the fifty thousand acres of reservation land for which water rights were explicitly recognized in the Decree ("Allotted Lands") and to the three hundred twenty-five thousand acres located within the reservation for which the Globe Equity Decree did not make any provision ("Surplus Lands").

4. GRIC argues at length that summary judgment is never appropriate if there is "the slightest doubt" as to any disputed fact or "any doubt as to whether there are issues of fact to be litigated under any theory of liability advanced." GRIC Objections to SM June Rep., p. 4. GRIC relies on outdated authority that describes a superceded standard governing when summary adjudication is appropriate. This court will abide by the standard adopted by the Arizona Supreme Court in *Orme School v. Reeves*, 166 Ariz. 301, 802 P. 2d 1000 (1990), in *Orme*, the Supreme Court recognized that when considering summary judgment requests, trial courts are not to "pass on the credibility of witnesses with differing versions of material facts . . . weigh the quality of documentary or other evidence . . . [or] choose among competing or conflicting inferences." 166 Ariz. 311, 802 P. 2d 1010. But if a viable motion is presented, summary judgment is to be granted if the opposing party does not come forward with evidence that would permit a reasonable jury to find, directly or by inference, against the movant.

case, '[i]t is a finality as to the claim or demand in controversy, concluding parities and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" *Nevada v. United* States, 463 U.S. 110, 129-130, 103 S. Ct. 2906, 2918 (1983) (citing *Cromwell v. County of Sac*, 94 U.S. 351, 352, 24 S. Ct. 195, 196 (1877)). Generally, for *res judicata* to apply two requirements must be met: 1. The "cause of action" currently before the court must be the same as that asserted in a prior proceeding, and 2. If it is, the court must determine whether the parties to the current action are identical or in privity with those in the former action.[5]

GRIC and the Government also urge that issue and claim preclusion are not applicable to consent judgments such as *Globe Equity Decree* because disputed matters were not resolved by a decision rendered at the conclusion of an evidentiary hearing. Both those supporting and challenging this assertion rely primarily on the United States Supreme Court's decision in *Arizona v. California*, 530 U.S. 392, 120 S. Ct. 2304 (2000) ("*Arizona III*") and the authorities cited therein. For example, the United States asserts that, "In the case of a judgment by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of

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5. The Special Master correctly concluded that here these determinations are to made by applying federal law, both because of the strong federal interest in litigation such as that giving rise to the Decree and because of Arizona courts' recognition that the law of the jurisdiction from which a judgment arose should be used when evaluating preclusion issues.

[Restatement (Second) of Judgments § 27[6] (1982)] does not apply with respect to any issue in a subsequent action." United States Exceptions/Objections to SM June Rep., p. 5 (emphasis omitted) (citing *Arizona III*, 530 U.S. 414, 120 S. Ct. 2319).

Those seeking summary disposition cite *Arizona III* for the proposition that consent judgments are treated just like any other judgments for preclusion purposes. GVID's and FID's Response to GRIC's Objections to SM June Rep., p. 3 (quoting *Arizona III*'s holding that "[c]onsent judgments ordinarily support claim preclusion . . ." *Id.*).[7]

The confusion present in these competing citations arises due to 1. The parties' attempts to apply rules relating to issue preclusion when considering claim preclusion (and vice versa), and 2. The fact that decisions of the United States Supreme Court indicate that claim preclusion is to be applied more liberally in cases fairly characterized as general water adjudications.

The dispute regarding whether consent judgments can serve as the basis for claim preclusion is easily resolved by reference to the Supreme Court's analysis in *Nevada* and

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6. The opinion refers to this section of the Restatement as providing the "general rule that *issue* preclusion attaches only '[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgement, and the determination is essential to the judgment'." (emphasis added) 530 U.S. 414, 120 S. Ct. 2319. The significance of this distinction is discussed *infra*.

7. See also *Suttle v. Seely*, 94 Ariz. 161, 382 P.2d 570 (1963).

Arizona *III*. In both opinions the Court recognized the distinction between the claim preclusion effect of *res judicata* versus the issue preclusion that is a consequence of successful assertion of collateral estoppel. In *Nevada*, the Court recognized that "final judgment puts an end to the cause of action, which cannot be brought into litigation between the parties upon any ground whatsoever." 463 U.S. 130, 103 S. Ct. 2918.[8] The *Nevada* court held that *res judicata* was an effective bar to a government water right claim even though the relevant prior decree was rendered when "[t]he district court entered a final decree adopting [a settlement] agreement. . . ." 469 U.S. 118, 103 S. Ct. 2912.

Justice Ginsburg's opinion in *Arizona III* also supports the conclusion that consent decrees can preclude parties from relitigating claims. *Arizona III* dealt, in part, with the question of whether a 1983 consent judgment of the United States Claims Court ("Claims Court") extinguished unasserted disputed title claims that were at issue in the litigation. The Court, consistent with its reasoning in *Nevada*, recognized that the judgment resulting from the parties' settlement, "indeed had, and was intended to have, *claim-preclusive* effect [b]ut settlements ordinarily occasion no *issue preclusion* (sometimes called collateral estoppel), unless it is clear . . . the parties intended their agreement to have such an effect." 530 U.S. 414, 120 S. Ct. 2319 (emphasis in

8. The footnote reference to this quotation explains the difference between the doctrines at issue here: "The corollary preclusion doctrine to res judicata is collateral estoppel. While the latter may be used to bar a broader class of litigants, it can be used only to prevent 'relitigation of issues actually litigated' in a prior lawsuit. *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322, 326, n. 5 (1979)." 463 U.S. 130, 103 S. Ct. 2918, n. 11.

opinion). With respect to *res judicata*, *Arizona III* and *Nevada* demonstrate that decrees entered by stipulation are to be treated as any other judgments.

As to the question of whether *Globe Equity* involved the same "cause of action" asserted by and on behalf of GRIC in this adjudication, the Supreme Court's opinion in *Nevada* again provides guidance. In determining that the causes before the federal district court were the same, Justice Rehnquist looked primarily at three factors contained within the record: 1. The relief sought in the pleading filed in the original action, 2. The language of the decree that concluded that litigation, and 3. The relief sought in the second case.[9]

The facts in *Nevada* dealt with what is referred to as the *Orr Ditch* case, in which the United States brought suit, in 1913, to adjudicate water rights to the Truckee River on behalf of both the Pyramid Lake Indian Reservation ("PLR") and the proposed Newlands Reclamation Project. A final decree was entered, in accordance with a settlement among the parties, more than thirty years after the case was filed. The United States acquired some water rights for PLR under

9. Adopting the analytical method outlined in *Nevada* also permits the court to avoid review of the secondary sources considered by the Special Master, an undertaking to which GRIC objects. To support his legal conclusions regarding preclusion, the Special Master made findings of fact regarding a number of materials (*e.g.* letters authored by individuals involved in *Globe Equity*). SM June Rep., pp. 34-41; Findings of Fact ("FOF") nos. 10, 18, 19, 20, 21, 26, and 28. While review of these documents was consistent with the methods employed in *Nevada*, the court notes Its resolution of the motions relating to the *Decree* did not require consideration of these secondary materials.

this judgment, but failed to obtain any allotment of unaided river flows to permit the Indians to maintain an important fishery. For this reason, the Government filed a second action, almost thirty years after the prior decree was entered, seeking a right to water sufficient to permit maintenance of a natural spawning ground on PLR land lying within the lower reaches of the Truckee River. This claim was barred because the federal district court upheld defendants' *res judicata* affirmative defense. The court of appeals affirmed this part of the district court's decision. *United States v. Truckee-Carson Irr. Dist.*, 649 F.2d 1286 (9th Cir. 1981), modified, 666 F.2d 351 (1982),

Speaking for a unanimous Supreme Court, Justice Rehnquist evaluated the "cause of action" issue by referring to the Government's intention in initiating and the relief requested, in the original action, The amended complaint averred that:

> Until the several rights of the various claimants . . . including the United States, to the use of the waters flowing in said river and its said tributaries in Nevada or used in Nevada have been settled, and the extent, nature, and order in time of each right to divert said waters from said river and its tributaries has been judicially determined the United States cannot properly protect its rights in and to the said waters, and to protect said rights otherwise than as herein sought if they could be protected would necessitate a multiplicity of suits.

* * *

Appendix D

> [t]he United States, having for a long time previous [to 1859] recognized the fact that certain Pah Ûte and other Indians were . . . residing upon and using certain lands [in and around the Truckee River Valley and Pyramid Lake], . . . and being desirous of protecting said Indians and their descendants ... and their use of said lands and waters . . . did reserve said lands from any and all forms of entry or sale and for the sole use of said Indians, and for their benefit and civilization . . . did . . . reserve from further appropriation, appropriate and set aside for its own use in, on, and about said Indian reservation, and the land thereof, from and of the waters of the said Truckee River, five hundred (500) cubic feet of water per second of time. (citations to the record omitted).

463 U.S. 132-133, 103 S. Ct. 2919-2920 (emphasis in opinion).

The Court held that the language of the Government's amended complaint evidenced that it intended to, and was given the opportunity to, assert all of PLR's water right claims, including those implied by law under the doctrine announced in *Winters v. United States*, 207 U.S. 564, 28 S. Ct. 207 (1908). Justice Rehnquist looked no further than the language of the decree entered in *Orr Ditch* to conclude that the United States succeeded in accomplishing its intended task stated in the amended complaint:

> The final decree in *Orr Ditch* clearly shows that the parties to the settlement agreement and the

> District Court intended to accomplish [the Tribe's water rights]. The decree provided in part:
>
> 'The parties . . . successors in interest . . . in or to the water rights or lands herein mentioned or described, are and *each of them is hereby forever enjoined and restrained from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined* and *allowed by this decree . . .*'."

463 U.S. 132, 103 S. Ct. 2919 (citation to record omitted) (emphasis in opinion).

Finally, the Court compared the broad assertion of water rights claimed by the Government in the original litigation and the scope of the *Orr Ditch* decree with the assertions in its second lawsuit. While recognizing that the allegations in the latter action focused more on PLR's reliance on fishing as a basis for a water right, the Court found that the causes of action in the two cases were the same because "it seems quite clear to us that [claimants] are asserting the same reserved right . . . that was asserted in *Orr Ditch*." 463 U.S. 134, 103 S. Ct. 2920.

In the present situation, the amended complaint filed by the Government in *Globe Equity* contains allegations very similar to (and in some respects broader than) those quoted

by the Supreme Court from the *Orr Ditch* record.[10] The *Globe Equity Decree*, just like the *Orr Ditch Decree*, clearly shows that the parties intended the *Decree* to resolve their relative water rights.[11] And there is no dispute that claims to the water

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10. Paragraph 15(a) of the amended complaint filed in *Globe Equity* states in pertinent part:

> (a) Until the rights of the various claimants . . . including the United States, to divert and use the waters flowing in said river within the area above defined, or to store such water above, with the extent, nature, and priority of such rights, have been judicially determined, the United State can not properly protect its rights to said waters; and to protect them otherwise than is herein sought, if they could be so protected, would necessitate a multitude of suits.

Paragraph 7(b) states in pertinent part, "the water rights reserved in connection with the reservation of said land for the Pima Indians are alleged to be the following, to wit: So much of the waters of the Gila River as should be needed to carry out the purposes of the United States in recognizing and in making said reservation of lands, and also in accomplishing the civilization and bringing about the prosperity of said Indians."

The court Is aware that those opposing summary adjudication differentiate the allegations and prayers for relief in *Orr Ditch* and *Globe Equity by* pointing out that *Orr Ditch* dealt with an adjudication of *all* those known to claim rights to water from the Truckee River *and* its tributaries while the scope of the *Globe Equity Decree* was more limited. These objections are addressed *infra*.

11. Article XIII of the *Globe Equity Decree* provides in pertinent part: (Cont'd)

source that was the subject of the *Globe Equity Decree* have been filed both by and on behalf of GRIC in this adjudication. The broad assertion of water rights in *Globe Equity*, when coupled with the other factors explained above, establishes that the portion of GRIC water claims in this adjudication that relates to the segment of the Gila River previously addressed by the federal district court constitutes the same cause of action resolved by the *Globe Equity Decree.*

Two arguments made by and on behalf of GRIC deserve special mention. First, the assertion that *Globe Equity* was not a comprehensive enough proceeding to support application of *res judicata.* Even GRIC acknowledges that *Globe Equity* involved, "a very complicated water rights litigation, involving thousands of parties and hundreds of thousands of acres of land, evolving over ten years. . . ." GRIC Objections, p. 11. The record reflects that the Government's amended complaint in Globe *Equity* sought to determine the rights to all those known to have water claims to the portion of the Gila River at issue. The water rights addressed in the *Decree* were the same rights described in paragraph 15 of the amended complaint filed in *Globe Equity. As* explained in the SM June Rep., the scope of the undertaking in *Globe Equity* was more than sufficient to permit the resulting decree to have a preclusive effect.

(Cont'd)

> [E]ach and all of the parties . . . and successors in interest . . . are hereby forever enjoined and restrained from asserting or claiming — as against any of the parties herein—. . .any right, title, or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree. . . .

See United States v. District Ct., County of Eagle, Colo., 401 U.S. 520, 523, 91 S. Ct. 998 (1971).

Second, in its filed objections, GRIC agrees that *res judicata* may be applicable in this adjudication, but that it is limited to "the cause of action" asserted in *Globe Equity*. GRIC Objections, p.19. GRIC wants the court to limit the scope of the *Decree's* preclusive effect to the Allotted Lands for which the Government obtained water rights. As the United States did not seek to protect water rights for GRIC's Surplus Lands, which constitute the vast majority of reservation realty, GRIC logically believes it should not be prejudiced for the Government's failure. This argument is best characterized as an assertion that the Government split its claim in *Globe Equity*, a procedure that movants claim is not permitted, but which the *Nevada* opinion suggests may be permitted.[12] This court sympathizes with GRIC's belief that the United States did not adequately represent its interests in *Globe Equity*, but the amended complaint filed in that litigation does not support GRIC's claim that anything less than its entire water right was put at issue by the Government. This court is bound to abide by the framework for applying preclusion that was employed by the United States Supreme Court in *Nevada*. In that case, the Court affirmed the principle that "after the United States on behalf of its wards . . . invoke[s] the jurisdiction of its courts . . . wards should [not] themselves be permitted to relitigate. . . ."[13] 463 U.S. 135, 103 S. Ct. 2921.

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12. *See* 463 U.S. 134, 103 S. a 2920, n. 13

13. The Supreme Court recognized the consequences its ruling visited upon Indians represented by the Government. ("We, of course,

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However, the record also establishes that the Government intended to limit the water rights asserted in *Globe Equity* to those flowing within that portion of the river system described in paragraph 15 of the amended complaint. The request for relief in this paragraph is distinguishable from that considered in *Nevada*, in that the *Orr Ditch* proceeding involved a situation in which river tributaries were included both in the claim for relief and the final judgment. Such is not the case in this adjudication. The Government's amended complaint in *Globe Equity* and the *Decree* establish that only water rights to flow from the mainstem of the Gila River were adjudicated by the federal district court.

Having determined that this adjudication, in part, involves the same cause of action that was asserted in *Globe Equity*, the court must decide which of the parties are bound by, or may benefit from, the effect of preclusion by judgment. The *Nevada* decision makes it clear that the United States, GRIC, SCIDD, FID, and GVID, and those in privity with them, may assert claim preclusion because their interests were represented in *Globe Equity*.[14] The more difficult question

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do not pass judgment on the quality of the representation that the Tribe received. In 1951 the Tribe sued the Government before the Indian Claims Commission for damages, basing its claim of liability on the Tribe's receipt of less water for the fishery than it was entitled to.") 463 U.S. 135, 103 S. Ct. 2921, n.14. *See* n. 18, *infra.*

14. GRIC objects to SCIDD's assertion of *res judicata* because the Government represented both parties in *Globe Equity*. GRIC claims this representation shows there was a lack of adversity

(Cont'd)

concerns the extent to which subsequent water claimants who were not parties to *Globe Equity* (or a party's privy or successor) can assert preclusion. The Special Master Thorson

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between GRIC and SCIDD that prevents claim preclusion from being applied. The Supreme Court has rejected this argument. The principle urged here by GRIC does not apply to water adjudications:

> A strict adversity requirement does not necessarily fit the realities of water adjudications. All parties' water rights are interdependent. . . . Stability in water rights therefore requires that all parties be bound in all combinations. Further, in many water adjudications there is no actual controversy between the parties; the proceedings may serve primarily an administrative purpose. . . .
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> * * *
>
> [And] . . . where Congress has imposed upon the United States, in addition to its duty to represent Indian tribes, a duty to obtain water rights for reclamation projects, and has even authorized the inclusion of reservation land within a project, the analogy of a faithless private fiduciary cannot be controlling for purposes of evaluating the authority of the United States to represent different interests.

(citations omitted). 463 U.S. 139, 143, 103 S. Ct. 2922-2923, 2924.

The Court went on to hold that in circumstances in which a water adjudication addresses claims by the Government on behalf of an Indian tribe, a reclamation project, and a large number of other claims, "It is unnecessary to decide whether there would be adversity of interests between the Tribe, on the one hand, and the settlers and [the project], on the other. . . ." 463 U.S. 143, 103 S. Ct. 2924.

found that *res judicata* could not benefit this class of litigants so he attempted to resolve the matter by determining whether the facts and applicable law would justify applying collateral estoppel principles. He noted that none of the movants had asserted a collateral estoppel argument, but he considered the scope of *Globe Equity's* reach within the framework of preclusion because issues present in this proceeding were actually in dispute (*e.g.*, entitlements for Allotted Lands) in *Globe Equity.* For that reason, the Special Master concluded the parties could be deemed to have intended for those disputed claims resolved by the *Globe Equity Decree.*

The court respectfully disagrees with the Special Master's analysis for two reasons. First, on the record before it, the court cannot find that issue preclusion applies. The *Globe Equity Decree* arose from a settlement. The district court did not enter a decision after considering arguments and evidence submitted by the parties. For the court to rule that collateral estoppel applies at this juncture would require a finding that the stipulated judgment entered in *Globe Equity* was clearly intended by the parties to preclude further consideration of the issues involved. *Arizona III*, 530 U.S. 414, 120 S. Ct. 2319. The record does not support entry of summary judgment on this issue.

The more important reason to reject issue preclusion is because controlling United States Supreme Court authority renders it moot with respect to the *Globe Equity Decree.* In *Nevada*, the Court eliminated the *res judicata* doctrine's mutuality requirement in instances in which the initial litigation giving rise to a claim preclusion defense can be fairly characterized as a comprehensive water rights

adjudication. In resolving the issue in *Nevada*, the Court characterized the treatment of subsequent water claimants who were not parties to the *Orr Ditch* decree as a "difficult question" and conceded that "mutuality . . . has remained a part of the doctrine of *res judicata*." 463 U.S. 143, 120 S. Ct. 2925 (citations omitted). Nevertheless, because the *Orr Ditch* decree resulted from a comprehensive determination of water rights that subsequent appropriators had relied on for years, the Court held it would be manifestly unjust not to apply *res judicata* principles. This holding establishes an exception to mutuality that applies when claim preclusion is asserted in a water case.

Case law and the record confirm there is no genuine dispute that *Globe Equity* was an adjudication comprehensive enough to fulfill the first prong of the Supreme Court's mutuality exception. *See United States v. District Court*, 401 U.S. 520, 91 S. Ct. 998 (1971); GRIC's Objection, p. 11. Satisfying the second requisite turns on whether this court can determine that there has been sufficient reliance on the *Globe Equity Decree*. In *Nevada*, the United States Supreme Court, without reference to the record, held that "[n]onparties such as subsequent appropriators in this case have relied just as much on the *Orr Ditch* decree in participating in the development of western Nevada as have the parties. . . ." 463 U.S. 144, 120 S. Ct. 2925. In its *Orr Ditch* opinion, the Ninth Circuit Court of Appeals held that the *Orr Ditch* decree, which contains relevant language similar to that found in the *Globe Equity Decree*, evidenced that, "clearly, the government intended to enable [subsequent appropriator] reliance when it consented to entry of the final decree." *United* States v. *Truckee-Carson Irr. Dist.*, 649 F.2d 1286,

1308, (1981). Nothing in either the Supreme Court's or court of appeals analysis suggests that determinations regarding mutuality were based upon evidentiary presentations at the trial level. To the contrary, Justice Rehnquist's reference to subsequent appropriators as among those who may rely on a water rights decree supports the view that common knowledge of the vast development in western states over the past decades may, in some cases, support use of the Court's *res judicata* mutuality exception.

In this adjudication, the court is fortunate to have guidance as to how to resolve the reliance issue. Among the questions faced by the Arizona Supreme Court in *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 175 Ariz. 382, 857 P.2d 1236 (1993), was whether the court should revisit water law principles it had established more than seventy years earlier in *Maricopa County Municipal Water Conservation District No. One v. Southwest Cotton Co.*, 39 Ariz. 65, 4 P.2d 369 (1931) *modified*, 39 Ariz. 367, 7 P.2d 254 (1932). The court refused to reconsider its prior water law edicts even though it recognized that rules it had pronounced, "may [have been] based on an understanding of hydrology less precise than current theories . . ." 175 Ariz. 389, 857 P.2d 1243.

What is relevant to consideration of the current motions is the court's stated reason for its decision: the belief that it would be fundamentally unjust to address anew rules relating to water entitlements decades after the state's water users had acted in reliance upon the court's prior determinations. This reasoning applies with equal force to the social and economic development following entry of the judgment in

Globe Equity.[15] The Arizona Supreme Court's recognition of this state's dramatic economic expansion, coupled with generally known facts relating to Arizona's evolution during the past sixty-seven years, justifies this court taking judicial notice of reliance on the *Globe Equity Decree* by subsequent appropriators, sufficient to satisfy the mutuality exception carved out in *Nevada.*[16]

Because this adjudication is equitable in nature, evaluating the consequences of this court's rulings is

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15. Chief Justice Feldman's opinion reflects the court's intention to apply finality to water right decisions even to those for whom preclusion would be generally unavailable:

> We perceive our role as interpreting *Southwest Cotton*, not refining, revising, correcting, or improving it. We believe it is too late to change or overrule the case. More than six decades have passed since *Southwest Cotton* was decided. The Arizona legislature has erected statutory frameworks for regulating surface water and groundwater based on *Southwest Cotton.* Arizona's agricultural, industrial, mining, and urban interests have accommodated themselves to those frameworks. *Southwest Cotton* has been part of the constant backdrop for vast investments, the founding and growth of towns and cities, and the lives of our people.

175 Ariz. 389, 857 P.2d 1243.

16. One of the U. S. Supreme Court's decisions in *Arizona v. California* also supports the view that little, if any, specific reliance must be shown to trigger the mutuality exception in water adjudications: "even the absence of detrimental reliance cannot open an otherwise final determination of a fully litigated issue."

460 U.S. 605, 626, 103 S. Ct. 1382, 1395 (1983) ("*Arizona II*").

appropriate. Here, the Government, as GRIC's guardian and trustee, put at issue all of the Tribe's water rights, but sought an award for less than fifteen percent of land within the Gila River Indian Reservation. As was the case in *Orr Ditch*, a legitimate question is raised about the quality of representation the Tribe received. This concern also arose in *Arizona II*. The facts in that case provide as strong an argument for not applying claim preclusion as those present here. Justice Brennan's dissent in *Arizona II* pointed out that "[t]he United States completely failed to present evidence regarding [water claims] . . ." thereby causing the relevant Indian tribes to suffer "a manifest injustice." 460 U.S. 643, 648, 103 S. Ct. 1404, 1406. In *Arizona II*, *Nevada*, and this case, it may be true that Indian tribes "bear the cost of the United State's error." 460 U.S. 649, 103 S. Ct. 1407. But controlling Supreme Court authority dictates that those presiding over water adjudications apply claim preclusion liberally to final judgments rendered in prior comprehensive proceedings. Any resulting harm visited upon Indian tribes as a result of this mandate must continue to be addressed in other forums.[17]

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17. The Special Masters' reports describe how relief can be had. In 1946, the Indian Claims Commission Act of August 13, 1946, (ch. 959, 60 Stat. 1049-1056, 25 U.S.C. § 70) was enacted to permit Indian tribes "to assert monetary claims against the federal government, otherwise barred by sovereign immunity, arising before passage of the act in 1946 and based on treaty or contractual violations, legal and equitable claims, land confiscation, and other claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity." SM Dec. Rep., pp.8 & 9, n. 2 (citations omitted). As discussed *infra*, GRIC has sought reparation under the Act. See *Gila River Pima-Maricopa Indian Community v. United States*, 2 Cl. Ct. 12 (1982).

None of the other matters raised by the parties, such as legally significant "changed circumstances" or consideration of what is referred to by the parties as the 1924 Landowners' Agreement, affect the results required with respect to the motions brought in these dockets. Accordingly,

IT IS ORDERED GRANTING movants' motions for summary judgment. In this adjudication, neither GRIC nor the United States on behalf of GRIC shall be entitled to claim water rights relating to the mainstem of the Gila River, including flow from the San Carlos River, except to the extent such rights were granted to them by the *Globe Equity Decree*.

B. SCIDD's motion relating to the Florence-Casa Grande Landowners' Agreement, San Carlos Irrigation Project Landowners' Agreement, and the Project Payment Agreement

[Docket No. 206]

After reviewing the record and considering the positions of the interested parties, the court determines that the above-referenced motion is moot as a result of the February 9, 2000, decision of the federal district court in *Globe Equity*. For this reason,

IT IS FURTHER ORDERED DENYING SCIDD's motion for summary judgment.

C. ASARCO'S motions asserting that GRIC's water rights are subject to a Water Rights

Appendix D

Settlement and Exchange Agreement and Consent to Assignment

[Docket No. 202]

With one minor exception, the court agrees with the Special Master's factual findings and legal conclusions relating to ASARCO's motion. The determination as to whether or not GRIC and ASARCO's adjudicated water right abstracts should be annotated to refer to the contractual agreements between these parties need not be decided at this time. The remainder of the SM June Rep. concerning this motion is adopted by this reference.[18] Based upon the foregoing,

IT IS ORDERED DENYING ASARCO's motion for summary judgment.

D. Motion for determination that water claims of GRIC and/or the Government are limited by the judgment entered *in Gila River Pima-Maricopa Indian Community v. United States*, *Docket No. 236-D*

[Docket Nos. 213 and 214]

SRP and Tempe request a ruling that neither GRIC nor the Government can lawfully assert a right to water in the Salt River system except with respect to those rights attributable to a parcel of land situated in the northwest corner

18. Specifically, Section VI, FOF Nos. 38-40 and COL No.38.

of the Gila River Indian Reservation. Movants believe they are entitled to relief due to the effect of the Claims Court's decision in *Gila River Pima-Maricopa Indian Community v. United States*, which was affirmed, in part, by the Court of Appeals for the Federal Circuit. 695 F.2d 559 (1982) ("Gila *236").* SRP and Tempe claim *Gila 236* represents a binding determination that GRIC possesses only a very limited right to use water originating from the Salt River system.

GRIC and the Government, the only parties to *Gila 236*, posit two objections to the motion: 1. Decisions such as *Gila 236* are not to be given preclusive effect, and 2. Movants have not satisfied the requisites for preclusion.

The circumstances giving rise to issuance of the *Gila 236* decision are adequately discussed in SM Dec. Rep., pp. 49-53. For purposes of this Order, the following are the most relevant, undisputed facts:

- In 1951, GRIC filed an action against the United States pursuant to the Indian Claims Commission Act seeking awards relating to a number of disputes. One of these disputes, designated "Docket 236-D," dealt with the Tribe's claim for compensation for Salt River water that should have been put to use on the GRIC reservation, but was used for other purposes.

- One phase of the litigation dealt with the extent of GRIC's Salt River water rights and specifically addressed GRIC's claim that it was entitled, "to the waters of the Salt River to irrigate 113,498 acres of land on the Gila River Indian

Reservation, representing all the practicably irrigable land on the reservation." 695 F.2d 561.

- *Gila 236* held that GRIC's Salt River water right claims were limited to 1,490 acres situated in the northwest corner of the reservation (hereinafter the "Maricopa Colony"):

> [T]he court must resolve whether in creating and enlarging the Gila River Indian Reservation the United States reserved water from the Salt River for the irrigation of reservation lands. The weight of the credible evidence clearly leads to a negative answer except for the . . . [Maricopa Colony])

695 F.2d 561.

- Approximately seventeen years after the *Gila 236* decision became final, GRIC and the United States resolved the remaining issues in the case by a stipulated judgment.

Movants believe GRIC and the Government are collaterally estopped from arguing positions inconsistent with the holdings in *Gila 236*. The most important prerequisite for asserting collateral estoppel — that an identical issue was actually and necessarily decided in an earlier case is clearly present here. The *Gila 236* decision directly addressed and unambiguously declared the land for which GRIC may claim Salt River water rights.[19] Despite this fact, GRIC and the

19. GRIC disagrees claiming that "[t]he right of an Indian Tribe to have been treated fairly and honorable [sic] by its trustee . . . is distinct, different and separate from the right of the Indian tribe to

(Cont'd)

Government argue that collateral estoppel does not apply to consent judgments such as that stipulated to in *Gila 236*.[20] But abundant authority supports the general proposition that they do. More importantly, in *Gila 236*, the Claims Court rendered its decision after the issue of GRIC's Salt River water rights was litigated by two adverse parties. It was this decision, which was contested on appeal, that is the basis for collateral estoppel here. The fact that more than a decade after the *Gila 236* decision resolved the parties' liability dispute, GRIC and the Government decided to settle the issue of damages is of no consequence. *See United States v. Pend Oreille Public Utility Dist.* No 1, 926 F.2d 1502 (9th Cir. 1991) (court of appeals applied preclusion to a resolution by the Indian Claims Commission involving the determination of liability by way of contested litigation, although damages were later resolved of by stipulated settlement) Collateral estoppel prevents GRIC from successfully asserting water rights that are inconsistent with the *Gila 236* decision.

The United States insists that even if otherwise pertinent, issue preclusion may not be used in this proceeding to limit

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have its *Winters*, aboriginal, and prior appropriation rights quantified, as against other claimants, for future application and enforcement." GRIC Objections, p. 15. For purposes of the current motion, the court is only focused on the issues of whether, and to what extent, GRIC may claim any water rights in the Salt River system. This issue was squarely before the Claims Court and the U.S. Court of Appeals for the Federal Circuit in *Gila 236*.

20. The Court has considered and rejected GRIC's claim that Claims Court decisions cannot generally support preclusion after reviewing the case law cited by the parties and the Special Master.

Government water claims. This argument is based upon the U.S. Supreme Court's opinion in *United States v. Mendoza,* 464 U.S. 154, 104 S. Ct. 568 (1984), in which the Court held that mutuality is required when attempting to apply collateral estoppel against the Government. This additional requirement for issue preclusion was recognized because of the Supreme Court's belief that: 1. Absent such a rule, development of important legal principles would be thwarted by premature finality, 2. Successive federal administrations would be bound to positions they do not support, and 3. The Government would be forced to appeal cases of limited legal significance.

In his report, Special Master Thorson recognized the rules laid out in *Mendoza*, but found them to be inapplicable to this case. He believed there is an exception to the *Mendoza* rule similar in nature and scope to that recognized in *Nevada* for *res judicata*. Movants urge adoption of the Special Master's decision by arguing that *Mendoza* is limited to its facts, and subsequent cases have indicated that nonmutual collateral estoppel may be raised against the United States in some instances.

The rule announced in *Mendoza* exists as a pronouncement of the nation's highest court that "nonmutual offensive collateral estoppel is not to be extended to the United States". 464 U.S. 158, 104 S. Ct. 571. Of course, in this instance both GRIC and the Government, albeit not adverse, are parties, and *Mendoza* made clear that "[t]he concerns underlying our disapproval of collateral estoppel against the government are for the most part inapplicable where mutuality is present. . . ." 464 U.S. 163-164,

104 S. Ct. 574. But lower courts need firm footing when distinguishing unambiguous Supreme Court pronouncements. There may be valid exceptions to the *Mendoza* rule, but the current situation does not present the extent of mutuality sufficient for this proceeding to fall outside of the ambit of *Mendoza.* In addition, the *Gila 236* litigation did not involve the same type of comprehensive resolution of widely-held rights that caused the Supreme Court to carve out an exception to traditional rules of claim preclusion. The rule announced in *Mendoza* prevents movants from prevailing against the Government on a collateral estoppel defense.

The policy considerations that caused the Supreme Court to fashion the *Mendoza* rule do not arise when courts consider whether the integrity of the judicial process requires that the United States be prohibited from taking a position inconsistent with one successfully asserted in a previous action. This evaluation invokes the doctrine of judicial estoppel. The United States does not dispute that it is subject to this type of preclusion, although both the Government and GRIC assert that Arizona law does not permit its use in this case.

The Arizona Supreme Court's most recent application of judicial estoppel appears in *State v. Towery*, 186 Ariz. 168, 920 P.2d 290 (1996). There the court set forth the elements of judicial estoppel by citing to its prior decision in *Standage Ventures, Inc. v. State*, 114 Ariz. 480, 562 P.2d 360 (1977):

> Three requirements must exist before the court can apply judicial estoppel: (1) the parties must

> be the same, (2) the question involved must be the same, and (3) the party asserting the inconsistent position must have been successful in the prior judicial proceeding.

186 Ariz. 182, 920 P.2d 304.

There can be no legitimate dispute that two of the elements listed above are present here. This court has already held that *Gila 236* dealt with an issue identical to one present in this adjudication: GRIC's entitlement to water from the Salt River system. And the record shows that the Government was successful in convincing the Claims Court that water from the Salt River was not generally reserved for the Gila River Indian Reservation. It is only the mutuality component of judicial estoppel that, on first reading, seems to bar this type of preclusion.

Movants argue that the "same parties" portion of Arizona's judicial estoppel test is merely *dictum* and that the Arizona Supreme Court has never refused to apply judicial estoppel due to the absence of mutuality. Review of the history of Arizona's judicial estoppel doctrine supports the claim that this state's supreme court has not addressed substantively the question of whether mutuality is a requisite for applying judicial estoppel.

In *Towery*, the court merely recites the judicial estoppel elements recognized in *Standage*. While the *Standage* court noted that its early decisions referred to a mutuality limitation as part of judicial estoppel (citing *Martin v. Wood*, 71 Ariz. 457, 229 P.2d 710 (1951)), it acknowledged lower appellate

court authority (specifically, *Mecham v. City of Glendale*, 15 Ariz. App. 402, 489 P.2d 65 (1971))[21] holding that mutuality is not necessary. The *Standage* court did not consider this conflict because in the case before it the relevant party had not previously obtained relief based upon an inconsistent position.[22] And its reliance on the *Martin* case is tenuous. To the extent germinated from *Martin*, this state's mutuality requirement rests entirely on: 1. A reference to a general discussion of judicial estoppel found at 31 C.J.S. 19, and 2. The Arizona Supreme Court's 1928 decision in *Rossi v. Hammons*, 34 Ariz. 95, 268 P. 181 (1928). It is noteworthy that in *Rossi*, the party against whom preclusion was found applicable had prevailed in a prior action by arguing that the then plaintiff could not sue because the state

21. The court also cited and quoted from *State Farm Auto. Ins. Co. v. Civil Service Employees Ins. Co.*, 19 Ariz. App. 594, 509 P.2d 725 (App. 1973), a case in which lack of mutuality was not case dispositive and one in which the court recognized the unsettled sate of the mutuality issue. *See* 19 Ariz. App. 599 n. 2.

22. Mutuality was not vital to the decision in *Towery* either. There, estoppel was denied because "judicial estoppel is generally not applied when the first inconsistent position was not a significant factor in the initial proceeding." 186 Ariz. 183, 920 P.2d 305. And while *Towery*, like *Standage*, lists mutuality as an element, it too suggests, at least Implicitly, that judicial estoppel may apply even when the parties in a subsequent action are not identical. ("criminal courts have indicated that judicial estoppel would preclude the state from changing its version of the facts in separate proceedings involving the same matter to protect the defendant's right to due process. See *People v. Gayfield* [Citations omitted] (suggesting that the state would be estopped form inconsistently claiming in separate proceedings that *different defendants* shot the same victim)."

186 Ariz. 182, 920 P.2d 304 (emphasis added)

superintendent of banks held the asserted claim. Preclusion was found when the same defendant attempted to challenge assertion of the same claim in a subsequent suit by the superintendent, who was not a party in the first case.

The decisions discussed above buttress the claim that the Arizona Supreme Court has not yet focused its attention on resolving whether mutuality is a requisite for invoking judicial estoppel. However, the Arizona Court of Appeals has weighed in on the subject. In *Mecham*, the court held that parties in an action could successfully use judicial estoppel even when they were not involved in the prior relevant litigation. It is true, as GRIC and the Government point out, that there are other intermediate Arizona appellate decisions that cite *Towery* and *Standage* and recognize mutuality as a judicial estoppel requisite. *See De Alfy Properties v. Pima County*, 195 Ariz. 37, 985 P.2d 522 (App. 1998). To resolve this conflict, the court has looked to the Arizona Supreme Court's statement regarding the fundamental purpose for this type of preclusion:

> [p]rotecting the integrity of the judicial process is the universally recognized purpose of judicial estoppel.
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> * * *
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> [I]t is not intended to protect individual litigants but is invoked to protect the integrity of the judicial process by preventing a litigant from using the courts to gain an unfair advantage.

Towery, 186 Ariz. 182-183, 920 P.2d 304-305.

Keeping these edicts in mind, the court cannot comprehend how mutuality aids in preventing the wrong judicial estoppel is designed to prevent. To the contrary, such a requirement could aid a party in obtaining an unfair advantage in litigation or blemishing the integrity that is so important to maintaining public confidence in our judicial process. Based on the foregoing,

IT IS ORDERED GRANTING SRP's and Tempe's motions. Both GRIC and the United States shall be prohibited from asserting any claim in this adjudication that is inconsistent with the judgment of the Claims Court in *Gila River Pima-Maricopa Indian Community v. United States*, Docket No. 236-D,

E. Motion for partial summary judgment as to the preclusive effect of the Claims Court's decision *in Gila River Pima-Maricopa Indian* Community v. *United States, Docket No. 228*

[Docket Nos. 209 and 210]

SRP and Tempe also seek an Order summarily holding that the judgment rendered in *Gila River Pima-Maricopa Indian Community v. United States*, Docket No. 228 ("Docket 228")[23] precludes GRIC and the Government from asserting any rights to water other than those recognized in the decrees entered in *Globe Equity* and *United States v. Haggard, No. 19*. This litigation resolved GRIC's claim that the

23. 2 Cl. Ct. 12 (1982). The U.S. Court of Appeals for the Federal Circuit twice considered the Claims Court's award. The final judgment appears at 2 Cl. Ct. 33 (1984).

Government had taken its aboriginal territory without providing just compensation. GRIC prevailed and was awarded more than six million dollars.

Movants assert the award obtained by GRIC in *Docket 228* permits assertion of the legal doctrines of judicial, collateral and "quasi" estoppel to limit GRIC's and the Government's water claims in this case.

Each doctrine asserted has as one of its elements the requirement that issues here be the same as those considered in another proceeding. Movants argue that this requirement is satisfied because as part of the *Docket 228* proceeding GRIC allocated all of its claimed aboriginal water rights in the Gila River system to the confiscated land that gave rise to *Docket 228's* monetary award. This award purportedly prevents GRIC from seeking entitlement to these same water rights in this proceeding. GRIC, the Government and the Special Master distinguish *Docket 228* by characterizing the relevant issue as involving the valuation of land, which only tangentially considered water rights and, therefore, cannot be used to justify preclusion.

In formulating the *Docket 228* judgment, did the Claims Court resolve water right issues present in this adjudication? Answering this question requires an understanding of the scope of each proceeding. This adjudication of claims to the Gila River system focuses on the extent and priority of rights to use water in the river system and its source. The court is required to evaluate competing demands for a scarce commodity — water flowing within the relevant watersheds. Close attention to whether any asserted claim is valid as to

entitlement and priority is vital. How does this undertaking compare with that faced by the Claims Court?

In *Docket 228*, the relevant question was the estimated value, as of November 15, 1883, of land appropriated by the Government. Although carefully and thoroughly studied by the parties and evaluated by the Claims Court, this type of retrospective appraisal unavoidably resulted from a somewhat cursory look at a number of factors (of which water availability is but one) to arrive at an imprecise conclusion.[24] Movants correctly point out that the Claims Court made an award that included agricultural acreage, the amount of which

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24. The Claims Court held:

> Where the fair market value of a large tract of land is to be found at a remote date in the past, without an active, open market, the Commission and the court have considered a variety of factors including evidence of private sales or auction sales, the location and physical characteristics of the land, climate, the type of settlers, the history and development of the area, economic conditions, natural resources . . . and size of the area.
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> * * *
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> The final result is an estimated value, not an actual value. . . . The task in this case is to estimate what a single, hypothetical, well-informed purchaser would have paid a hypothetical, well-informed seller for 3,312,858 acres of Arizona land on November 15, 1883, . . . with a recognition that different tracts in the award area could have different most profitable uses.

2 Cl. Ct. 27, 28-29.

was "determined by the amount of water available for irrigation, not the acreage of arable land . . . ," and that the award relating to agricultural land was "inclusive of water rights." 2 Cl. Ct. 29, 32. But the Claims Court did not consider what specific water rights plaintiffs held, their relative priority, or whether if as of 1883 there were any limits on the Indian tribes' right to stream flow. The court's opinion evidences that neither the Claims Court nor any of the parties focused on quantifying entitlements to stream flows, or other issues relevant to water adjudications. For example, the court held that water availability was the primary factor limiting the amount of land that could be considered as having an agricultural use, but not even plaintiff's hydrology expert considered sufficiently whether it would be appropriate to discount upstream diversions based upon the tribe's prior aboriginal water rights.[25]

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25. The Claims Court held:

> The factor limiting the amount of land in the award area that actually could be used as agricultural land was the availability of water.
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> * * *
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> [P]laintiffs' hydrology expert . . . calculated the Gila River, Santa Cruz River, Salt River, Agua Fria River, Hassayampa River and miscellaneous unmeasured tributaries, in 1883, in the award area had a total virgin flow of 2,271,900 acre-feet. *This was adjusted for upstream depletions (mainly from irrigation farming) calculated to be present in 1883 . . . to derive . . . the virgin flow into the award area.*"). (Emphasis added)

(Cont'd)

Appendix D

The only water related issue that this court can definitely determine was addressed in *Docket* 228 was whether, in valuing the land for which compensation was to be awarded, the Claims Court should assume that adequate water was available for the uses asserted. Because movants have not fulfilled the identical issues element that is requisite to granting the relief they have requested, and because the record reflects genuine disputes as to material facts,

IT IS ORDERED DENYING movants' motion for summary judgment as to the preclusive effect of the Claims Court's decision in *Docket 228.*

F. Motion for judgment as to the effect of the 1903 decree entered in *United States v. Haggard* and the 1936 Maricopa Contract

[Docket Nos. 213 and 214]

The SM June Rep. (pp. 33-35, 45) contains an adequate description of the facts surrounding the decree and contract

(Cont'd)

In addition, this court is unclear as to the weight given to the fact that much of the water flow in 1883 was unregulated. The *Docket 228* opinion Indicates that more than half of water available for irrigation was not utilized because means were not in place to store and regulate flows. Plaintiffs' expert computed hypothetical partial regulated flows, but the Claims Court rejected this analysis and, in any event, did not quantify and declare Indian water rights in order to determine its valuation award.

at issue in this motion. On the current record, even if preclusion doctrines were otherwise applicable, the court agrees with the Special Master's conclusion that the United States Supreme Court's "recognition of the federal reserved water rights doctrine . . . provides a 'rare' but sufficiently changed circumstance to provide an exception under the federal claims preclusion doctrine.[26] Accordingly,

IT IS ORDERED DENYING movants' request for summary judgment as to the preclusive effect of the decree entered in *United States v. Haggard* or the contract between the Government and SRP, approved by the Pima Tribal Council that is referred to in the SM Dec. Rep. as the "Maricopa Contract."

G. Request for judgment regarding the effect of the 1907 Sacaton Agreement between SRP and the United States

[Docket Nos. 211 and 212]

For the most part, SRP's motion concerning the effect of its 1907 hydroelectric power agreement with the United States (the "Sacaton Agreement") is rendered moot by the court's ruling regarding GRIC's ability to assert rights to water from the Salt River. To the extent the motion remains viable, the court incorporates by this reference SM Dec. Rep. FOF Nos. 76-92 and COL Nos. 15, 16, 18, 19, 20 (to the

26. SM Dec. Rep., p.39. Although not discussed in this Order, the court did consider, and reject, GRIC's claim that changed circumstances prevented preclusion principles from applying in connection with motions that were discussed in the SM June Rep.

extent consistent with this Order), and 21. Based on these findings and conclusions, and on the 1992 Claims Court decision in *Gila River Indian Community v. United States* referred to in the SM Dec. Rep. p. 73,

IT IS ORDERED GRANTING SRP's motion. Neither GRIC nor the United States on behalf of GRIC shall be permitted to assert, in this adjudication, a claim that GRIC possesses any interest, ownership, or right to use, the dams, reservoirs, canals or other works owned by SRP that are related to the Sacaton Agreement.

H. Request for judgment regarding the binding effect of the Buckeye-Arlington Agreements.

[Docket Nos. 224 and 225]

Buckeye, Arlington, and others moved for judgment against GRIC and the Government based upon the provisions of two agreements, one entered into by the United States and Arlington, and the other by Buckeye and the Government, and each dated May 29, 1947 (collectively the "Buckeye-Arlington Agreements"). These contracts arose as the result of the settlement among the parties of an action commenced in 1929 that affected interests of GRIC addressed in a proceeding designated as Docket 236-F in the *Gila River Pima-Maricopa Indian Community v. United States* case ("*Gila 236-F*").[27] The request for relief with respect to the Buckeye-Arlington Agreements cannot be granted for two reasons:

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27. The decision of the Claims Court In this case is found at 9 Cl. Ct. 660 (1986).

1. Judicial estoppel does not apply because the record does not establish that any party obtained prior judicial relief by asserting a position that was both a significant factor in obtaining the relief granted and inconsistent with positions taken in this adjudication. *Towery*, 186 Ariz. 168, 920 P.2d 290, and

2. Genuine disputes as to material facts exist that preclude summary adjudication. *See* SM Dec. Rep., pp. 93-95.

Accordingly,

IT IS ORDERED DENYING movants' motion with respect to the Buckeye-Arlington Agreements.

IT IS FURTHER ORDERED the motions of Special Master Thorson for approval of his reports are approved to the extent consistent with this Order.

IT IS FURTHER ORDERED the Arizona Department of Water Resources shall prepare subsequent hydrographic survey reports in accordance with the determinations made in this Order.

s/ Eddward P. Ballinger, Jr.
The Honorable Eddward P. Ballinger, Jr.
Judge of the Superior Court

March 7, 2002

APPENDIX E — REPORT OF THE SPECIAL MASTER OF THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA DATED JUNE 30, 2000

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Consolidated

Contested Case No. W1-203

[Table of Contents intentionally omitted]

REPORT OF THE SPECIAL MASTER

Contested Case No. W1-203
In re the Water Rights of the Gila River Indian Community
Motions for Summary Judgment
Heard on April 26, 2000

I. INTRODUCTION

The Pimas and Maricopas of the Gila River Indian Community, perhaps of all American Indian tribes, epitomize the agrarian, pastoral, and civilized communities envisioned when the federal government sought to restrict native people to ever-diminishing reservations. The Pima and Maricopa people were generally cordial and helpful to the Europeans and Americans who entered and settled within their aboriginal

range. Their hospitality was not always returned in kind, as settlers continually encroached on Indian lands and water.

The Pimas and Maricopas of the Gila River Indian Reservation, established by Congress in 1859, had abundant arable lands but the misfortune of a middle-river location that allowed upstream settlers, who moved into the upper valley from Florence to the Duncan-Virden area starting in the 1860s, to easily diminish Gila River flows. Having assumed fiduciary obligations for these Indian people, the United States government undertook a series of initiatives to secure adequate water for the reservation. During the 50 years from 1875 to 1925, the federal government sought to buffer Indian agriculture by additions to the reservation made through a series of seven presidential executive orders (expanding the size of the reservation from 100 to 580 square miles); encouraged Indian groundwater use; authorized and constructed the San Carlos Project, a collection of water storage and distribution facilities (most notably Coolidge Dam and San Carlos Reservoir); and initiated federal court litigation, now widely known as *Globe Equity No. 59*,[1] to settle water rights on the upper mainstem of the Gila River.

For the 65-year period since it was entered in 1935, the *Globe Equity* consent decree has comprised the "law of the Gila River" although the meaning of the legal regime has often been litigated and debated. Although among the principal beneficiaries of the *Globe Equity Decree*, the Gila River Indian Community (GRIC) is not a party to the decree. Indeed, its predecessor, the Pima Indian Tribal Council, was

1. United States v. Gila Valley Irr. Dist., Globe Equity No. 59 (D. Ariz. 1935).

denied the opportunity to intervene and participate in the *Globe Equity* litigation, days before the consent decree was entered. Until 1982, the interests of these Indians in the Gila River were asserted by the United States although the fidelity of federal representation has often been challenged by the Community in other venues. Simply stated, the Community does not believe the *Globe Equity Decree* embodies all of their rights and interests to the Gila River and its tributaries.

Arizona's general stream adjudication has applied another layer of complexity to the upper Gila River and the Community's rights in those waters. The Gila River Indian Community, supported by the United States, believes that additional water rights beyond those established in *Globe Equity* can be claimed and established in the Gila River system through this state court adjudication. Non-Indian claimants assert that the Community's claims to Gila River water are limited by the preclusive effect of the *Globe Equity Decree* and certain contractual obligations entered into by the Community or the United States in its behalf. The *Globe Equity Decree* has always cast a long shadow over the Gila River adjudication. The motions for summary judgment considered in this report finally provide the adjudication court with an opportunity to determine *Globe Equity's* significance for these proceedings.

II. STATEMENT OF THE CASE

According to the Gila River Indian Community, its aboriginal territory originally consisted of 3.75 million acres, an area that today is bounded by the Gila Bend and White Tank Mountains on the west, present-day Lake Pleasant and

confluence of Salt and Verde Rivers on the north, Tortilla Mountains on the east, and the I-10 and I-8 highway corridor on the south. Statement of Claimant No. 39-36340. The area comprises almost all of the Phoenix metropolitan area.

Both the United States and the Gila River Indian Community filed statements of claimant in the Gila River adjudication for water rights attributable to the Gila River Indian Reservation. The federal claim as trustee was filed in the Lower Gila River Watershed [2] and asserts a current use of 270,000 acre-feet per year [hereinafter "ac-ft/yr"] and a future use of more than 1.5 million ac-ft/yr for irrigation and other purposes including domestic, industrial-commercial, and mining. An unquantified storage right is also asserted. The water is claimed for Indian lands both within and without the San Carlos Project. The source of water includes the Gila River, as well as tributaries not adjudicated by the *Globe Equity Decree.* The claim also says that, in the event that the *Globe Equity Decree* is not found to be determinative of the federal claim, the United States asserts additional rights in the Gila River system sufficient to satisfy the Community's reserved water rights. Statement of Claimant No. 39-35092; *see also* ARIZONA DEPARTMENT OF WATER RESOURCES [ADWR], PRELIMINARY HYDROGRAPHIC SURVEY REPORT FOR THE GILA RIVER INDIAN RESERVATION App. F, at F-53 (Rev. Feb. 3, 1999) [hereinafter "PRELIMINARY HSR"].

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2. Statement of claimant forms were identified by major watersheds allowing claimants to identify the area in which their claimed water rights were located. The federal claim was filed in the Lower Gila River Watershed where the reservation is located.

Appendix E

The Indian Community also filed six statements of claimant on its own behalf in the state general stream adjudication. These claims were filed in five of the seven watersheds comprising the Gila River adjudication (Upper Gila River, Lower Gila River, San Pedro River, Verde River, and Salt River watersheds; not filed in the Upper Santa Cruz or Agua Fria watersheds).[3] Generally, these claims assert water rights of almost 1.6 million ac-ft/yr for irrigated agriculture and a variety of other uses, 205,000 ac-ft/yr for hydropower production, 267,000 ac-ft/yr in storage, as well as groundwater. The irrigation claim is for both San Carlos Project and non-project lands. Statements of Claimant Nos. 39-12652, 39-5478, 39-41142, 39-60083, 39-36340, 39-37360; *see also* PRELIMINARY HSR App. F, at F-52.

The motions for summary judgment at issue here comprise one phase in the progressive determination of the water rights of the Gila River Indian Community, a proceeding known as contested case no. W1-203. In 1995, the Arizona Legislature requested early consideration of the claims of Indian tribes and federal agencies as a strategy for reducing the cost and complexity of Arizona's ongoing general stream adjudications. H.B. 2276, § 24(C), 42d Leg., 1st Sess. (Ariz. 1995). Based on this suggestion and the court's own experience, Judge Susan R. Bolton, the superior court judge presiding over the adjudication, ordered the preparation of the hydrographic survey report (HSR) for the Gila River Indian Reservation. Minute Entry at 1 (Aug. 31,

3. It is unclear whether the Community filed claims throughout most of the Gila River system so as to assert diversions, places of use, or claims to the water arising in these many watersheds. *See supra* note 2.

1995). The Arizona Department of Water Resources prepared a preliminary HSR, issued in January 1997, limited to an estimate of water supply physically available to the reservation, the amount of arable land on the reservation, current water uses on the reservation, and an economic analysis of irrigation practices on or near the reservation. This work was later folded into a more complete preliminary HSR that was released by ADWR on February 3, 1999. This preliminary HSR included information on the available water supply on the date of its creation in 1859 and subsequent additions, irrigation water duties, and a summary of the Community's nonagricultural water right claims. On May 2, 2000, Judge Bolton directed ADWR to proceed with completion of the final HSR once certain allottee information is received from the Gila River Indian Community. Minute Entry at 4 (May 2, 2000). The filing of the final HSR will commence a statutory 180-day objection period and set the stage for evidentiary hearings.

Judge Bolton also set in motion other threshold activities to coincide with ADWR's efforts. In order to complete much of the discovery necessary for this contested case, parties intending to participate at trial were ordered to disclose potentially relevant documents. After a series disclosures extending from 1998 to the present, 18,600 documents, consisting of 146,400 pages, have been submitted to the Office of the Special Master and made available to the parties. Upon the suggestion of many parties, Judge Bolton also ordered the filing of motions that could limit the scope of litigation. Minute Entry at 2-3 (Sept. 11, 1998). The motions considered here are among a series of motions for summary judgment that purport to preclude or limit the water right

claims of the Gila River Indian Community in this general stream adjudication. These motions, which were referred to Special Master John E. Thorson on February 1, 2000, are as follows:

1. Motion for Summary Judgment filed by the Gila Valley Irrigation District, Franklin Irrigation District, San Carlos Irrigation and Drainage District, Salt River Project, and City of Tempe (Mar. 1, 1999), asserting that the water right claims of the Gila River Indian Community, or on its behalf, are precluded by the *Globe Equity Decree* (Docket No. 119).[4]

2. Motion for Summary Judgment filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (Mar. 1, 1999), asserting that any water right claims of the Gila River Indian Community, or on its behalf, to the San Carlos River are precluded by the *Globe Equity Decree* and other documents (Docket No. 118).

3. Motion for Summary Judgment filed by the San Carlos Irrigation and Drainage District (Oct. 4, 1999), asserting that the water right claims of the Gila River Indian Community, or on its behalf, are conditioned on certain agreements commonly known as the Florence-Casa Grande Landowners' Agreement, San Carlos Irrigation Project

4. The discussion and determination of this motion also includes similar assertions made by the San Carlos Irrigation and Drainage District (Docket No. 206). *See* note 5, *infra*.

Landowners' Agreement, and the Project Repayment Contract (Docket No. 206).[5]

4. Motion for Summary Judgment filed by ASARCO Incorporated (Oct. 4, 1999), asserting that the water right claims of the Gila River Indian Community, or on its behalf, are conditioned by the Water Rights Settlement and Exchange Agreement (Jan. 1, 1977) and the Consent to Assignment [of the Water Rights Settlement and Exchange Agreement] (April 25, 1993) (Docket No. 202).

The litigants joining and opposing these motions are identified in Appendix A, which is also an index of all pleadings filed concerning these motions.

III. PRECLUSIVE EFFECT OF THE *GLOBE EQUITY DECREE*

Motion for Summary Judgment filed by the Gila Valley Irrigation District (GVID), Franklin Irrigation District (FID), San Carlos Irrigation and Drainage District (SCIDD), Salt River Project (SRP), and City of Tempe (Mar. 1, 1999), asserting that the water right claims of the Gila River Indian Community, or on its behalf, are precluded by the *Globe Equity Decree* (Docket No. 119).

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5. Portions of this motion urge the preclusive effect of the *Globe Equity Decree*. For purposes of this discussion and determination, these allegations are combined with the motion for summary judgment filed by the Gila Valley Irrigation District *et al.* (Docket No. 119).

Appendix E

A. *Introduction*

Globe Equity No. 59 was a federal district court proceeding initiated by the United States in 1925 to assist the San Carlos reclamation project by establishing water rights in the Gila River. The San Carlos Project, among the West's first federal reclamation efforts, was envisioned when the federal Reclamation Act was passed in 1902. The idea was realized in a series of congressional enactments authorizing the construction of the San Tan Canal in 1905, the Florence-Casa Grande Irrigation Project in 1916 resulting in the construction of two diversion dams and canals, and the San Carlos Irrigation Project Act of 1924, authorizing the construction of the San Carlos (later Coolidge) Dam and Reservoir. Act of Mar. 3, 1905, 33 Stat. 1081; Act of May 18, 1916, 39 Stat. 123-30; Act of June 7, 1924, 43 Stat. 475. As stated by the United States,

> The San Carlos Project was intended to be a "combined Indian and white man's irrigation project." Pima Indians and the San Carlos Irrigation Project Hearing on S. 966 Before the House Commissioner [sic] on Indian Affairs, 68 Cong. 1st Session, at 3 (1924). Non-Indian participation in the project was deemed necessary in order to pay for its construction costs.

United States' Response 3 (Oct. 5, 1999) [Docket No. 232].

The federal government brought the *Globe Equity* litigation in its own name but beneficially for the Indians living on the Gila River Indian Reservation, the San Carlos

Apache Reservation, and the reclamation project and its anticipated non-Indian water users who had pledged water rights to enable to project. Among the defendants were many of the litigants (or their successors) now bringing this motion. The litigation concluded in a consent decree entered in 1935 and included detailed schedules of approximately 3,000 water right diversions determined in the proceeding. *Globe Equity Decree* [OSM No. 4].[6] The resulting lengthy, convoluted *Globe Equity Decree* has been the subject of numerous enforcement actions in federal court over the years, and certain interpretative and administration issues are even now pending before federal district court.

Globe Equity is essentially an agricultural decree. Virtually all of the water rights adjudicated are irrigation water rights. One exception appears to be certain industrial, municipal, and domestic rights are recognized for the Kennecott Copper Corporation. *Globe Equity Decree* art. X(1).

In their motion, the moving litigants assert that the *Globe Equity Decree* "resolved all claims of the United States, as trustee for the Indians of the Gila River Indian Reservation, to water from the Gila River for use on the Gila River Indian Reservation." GVID's Motion for Summary Judgment at 1 (Docket No. 119). They ask the court to recognize the

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6. The "OSM No." designation refers to documents submitted to the Office of the Special Master during disclosure by the parties. The full serial number is "OSM No. W1-203-4."

preclusive effect of the *Globe Equity Decree*, under the doctrine of *res judicata.* The Gila River Indian Community and the United States respond (Docket Nos. 216 and 232) that the requirement of a *res judicata* bar are not satisfied; the Community's claims in this adjudication are not precluded by the earlier litigation; and, since material facts are in dispute, such a determination cannot be reached on a motion for summary judgment. The Arizona general stream adjudication statute provides "that when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court, the court shall accept the determination of such rights and dates of appropriation as found in the prior decree unless such rights have been abandoned." ARIZ. REV. STAT. ANN. § 45-257(B)(1) (Supp. 1999).

At issue in this case are tribal and federal claims for two types of land: (a) additional water rights for the approximately 50,000 acres of reservation land that was awarded water under *Globe Equity;* and (b) water rights for the approximately 325,000 acres of reservation land that were allegedly omitted from the *Globe Equity* litigation. Because the 50,000 acres were originally intended to be allotted to individual Indian farmers, this land is referred to as "allotted" or "allotment" lands in this report. The latter category of land is referred to as "surplus" lands since people at the time assumed the land was surplus to the Indians' needs and eventually would be conveyed to non-Indian farmers by homesteading, sale, or other transactions.

The moving parties here consist of parties to *Globe Equity*, their successors and privities, and other water users

who claim they have relied on the finality of that adjudication. Thus, general principles of the *res judicata* doctrine are central to this report. In the following, *res judicata* is often referred to as "claim preclusion." The related concept of collateral estoppel is often referred to as "issue preclusion."

This controversy closely resembles preclusion litigation concerning the federal *Orr Ditch Decree*, on Nevada's Truckee River, that culminated in a famous U.S. Supreme Court decision, *Nevada v. United States*, 463 U.S. 110 (1983). Our case is also similar to aspects of the even more famous *Arizona v. California* litigation concerning water rights to the Colorado River, and a June 2000 decision in the continuing saga of that case is also of assistance in resolving the issues presented by this motion for summary judgment. A detailed understanding of these cases is necessary to ascertain the guidance the Supreme Court has provided.

B. *Nevada v. United States (Orr Ditch Decree)*

The *Orr Ditch* litigation concerning the Truckee River was originally brought as an equitable action ("Equity No. 3") by the United States in federal district court in 1913, in an effort to adjudicate water rights for the benefit of the Pyramid Lake Indian Reservation and the Newlands Reclamation Project, the first project to be constructed under the 1902 Reclamation Act. The Truckee River originates in the Sierra Nevada Mountains of California, flows into Lake Tahoe, and then north from the lake and easterly into Nevada terminating in Pyramid Lake (on the Indian reservation), a body even larger than Tahoe. The Truckee River is a closed basin that contains 1,872 square miles. Compared to the Gila

River, the Truckee has relatively few tributaries, *e.g.*, the Little Truckee River.

The Pyramid Lake Reservation had been initially set aside for the Paiute Tribe by the Secretary of the Interior in 1859 with President Grant signing an executive order confirming the reservation in 1874. One of the purposes for this reservation "was to enable the Tribe to take advantage of the Pyramid Lake fishery, then consisting of a native species of cutthroat trout, and the cui-ui, which exist nowhere else." *United States v. Truckee-Carson Irr. Dist.*, 649 F.2d 1286, 1290 (9th Cir. 1981). The Indians also began modest irrigated agriculture, consisting of about 1,000 acres at the turn of the century. This compared to about 40,000 acres of non-Indian irrigated agriculture in the Reno area alone. *Id.*

Shortly after passage of the Reclamation Act, the Secretary withdrew public lands for the Newlands Project, to be supplied by water from both the Truckee and Carson Rivers, and asserted claims for all unappropriated water in the Truckee River. In 1904, Congress authorized the Secretary to include reservation lands within the project. About 20,000 acres of the 322,000-acre reservation were thought to be irrigable. The Interior Department planned to convey irrigable land to Indians in 5-acre allotments with the surplus lands being sold to settlers.

The federal government believed a determination of existing water rights was necessary before the Newlands Project could be completed. The extent and relative priorities of Indian and non-Indian rights would have to be determined before Interior could ascertain how much additional water

could be claimed for the project. The case was ultimately filed as a quiet title action on March 3, 1913, naming as defendants all existing water users on the Truckee River in Nevada. The federal complaint, filed by some of the same federal attorneys also involved in the *Globe Equity* proceedings (John Truesdell and, later, Ethelbert Ward), asserted a claim of 10,000 cubic feet per second [cfs] for the project and 500 cfs for the reservation.

For six years after the complaint was filed, the United States completed engineering studies to buttress its claims. Reservation lands fell into two categories: 2,400 acres of riparian lands that were mostly developed and 19,000 acres of less desirable bench lands. While all this land was to be included in the project, the federal attorneys assumed that only 3,000 acres of bench lands would be allotted to Indians; the remaining bench lands would be sold as surplus lands to settlers who would have "'to depend for their water right upon the general project water right.'" *Id.* at 1291 (quoting Ex. U-88 at 2). Thus, the claim asserted in behalf of the Indians was for 5,400 acres (2,400 acres of bottom lands and 3,000 acres of bench lands—out of a reservation of 322,000 acres!).

The case languished in court, but following evidentiary hearings between 1919 and 1921, the Special Master suggested the entry of a temporary restraining order that could be evaluated during a trial period. The temporary order was entered by the federal judge in 1926 and awarded the reservation with 12,412 ac-ft/yr with an 1859 priority date for 3,130 acres of bottom lands, as well as water for the expected number of Indian allotments of bench land. The

reclamation project was awarded water for 232,800 acres although only 65,000 acres would ever be developed. That same year, the federal government signed a contract with the Truckee-Carson Irrigation District allowing this organization of irrigators to operate the reclamation project.

During the 1920s, increasing upstream diversions and the accumulation of logging debris in the waterways combined to decimate the Truckee River fishery. Between 1920 and 1940, the level of Pyramid Lake declined 40 feet, the cut-throat trout were extinct, and cui-ui were just barely surviving. Reno area Indian agents wrote the Commissioner of Indian Affairs in 1935: "'You have assured us ... that it will be practically impossible at this late date to obtain any assured flow of water from the Truckee River into the Lake. The time for that was when the original Truckee River water rights were being adjudicated.'" *Id.* at 1294.

After the Indian Reorganization Act (Wheeler-Howard Act) ended reservation allotments in 1934, ch. 216, 48 Stat. 984 (June 18, 1934), federal attorney Ward suggested to the Bureau of Indian Affairs that a federal reserved right be asserted for all 19,000 acres of arable bench lands. The BIA rejected this possibility because of its 'doubtful feasibility from all standpoints.'" *Id.*

The *Orr Ditch* parties also negotiated a final agreement during the 1930s. The Interior Department, while obtaining an increase in water duty over the 1926 order, agreed to limit its reservation claims to 3,130 acres of bottom land, 2,745 acres of bench land, and no water for the fishery. A consent decree along these lines was entered in 1944.

Appendix E

The United States appeared in the *Orr Ditch* litigation as trustee for the Pyramid Lake Indians and as representative of the predominately non-Indian reclamation project. While the government succeeded in establishing irrigation rights benefiting both the reservation and the reclamation project, it failed to establish water rights protective of the fishery that was central to the culture and economy of the Paiute Tribe. In 1951, the Pyramid Lake Tribe sued the federal government in the Indian Claims Commission for damage to the fishery, and the Commission found the government liable, leading to a compromise settlement of $8 million. The settlement allowed the Tribe to seek additional rights in the Truckee River. *Id.* at 1295.

1. Federal District Court Proceedings

The decline of the fishery led to a separate federal court action filed in 1973 by the United States and the Pyramid Lake Tribe seeking to quiet title to water sufficient to sustain the Pyramid Lake fishery. Non-Indian water users in the basin defended on the basis of *res judicata*, *i.e.*, the Tribe's rights had been determined in the original *Orr Ditch* litigation. After bifurcating the case and conducting an evidentiary hearing on the *res judicata* defense, the federal district court (Anderson, J.) determined that the original *Orr Ditch Decree* was a bar to the second action. Memorandum Decision, set forth in App. E, Petition for Writ of Certiorari filed by State of Nevada, *Nevada v. United States*, No. 81-2245 (June 7, 1982). This result was affirmed by the U.S. Court of Appeals, *United States v. Truckee-Carson Irr. Dist.*, 649 F.2d 1286 (9th Cir. 1981) (Skopil, J.), and by a unanimous U.S. Supreme Court, *Nevada v. United States*, 463 U.S. 110 (1983) (Rehnquist, J.).

Appendix E

The district court determined that the causes of action in both cases were the same. The Tribe, one of the plaintiffs in the second action, was in privity with the United States, the plaintiff in the original action. As to whether federal attorneys and officials had a conflict of interest in the original litigation, the district court ruled that federal agency officials had weighed the competing, congressionally imposed policy considerations and reached a decision that resulted in the extinguishment of the alleged fishery purposes water right. The federal attorneys involved in the original *Orr Ditch* proceedings did not have a conflict of interest when implementing the policy choices of their superiors, and the Tribe had not been injured in a way that would defeat the water rights obtained by the defendant non-Indian water users in the original litigation.

2. U.S. Court of Appeals Decision

The court of appeals rejected arguments distinguishing the two causes of action. Dismissing the Tribe's argument that different evidence would be offered to establish a fisheries (rather than irrigation) water right, the court responded:

The basis for either kind of reserved right would be the same: the executive actions by which the Reservation was established, and the intent that motivated those actions. The priority date depended on the same evidence. The water rights are appurtenant to the same reservation, and relate to the same source of water. Though a determination of quantity would depend on different evidence, this by itself is insufficient to distinguish this cause of action from the *Orr Ditch* cause of action.

649 F.2d at 1301 (citations omitted). The court also concluded that the federal government intended an all-inclusive, final adjudication of the Truckee River and that the decree prevented relitigation of both those claims that were litigated and those that could have been litigated, the federal government having "placed in issue the full Reservation cause of action." *Id.* at 1302.

The court addressed the significance of the federal government's conflicting policy interests in the context of privity. The Tribe could be bound by the actions of its fiduciary, the United States, unless other water users were aware of and benefited from the fiduciary's failure to fulfill its trust responsibility. Since the trial court had found that the original defendants lacked such knowledge, the appellate court concluded that the Tribe remained in privity with the United States, the original plaintiff, and *res judicata* could be imposed. The court also extended the benefits of its *res judicata* finding to subsequent appropriators who were not parties to *Orr Ditch* but who had reasonably relied on the finality of the original degree. *Id.* at 1308.

The court of appeals, however, concluded that the Truckee-Carson Irrigation District could not assert the preclusive effect of the original *Orr Ditch Decree*. Like the Tribe, the district had not been party to the original litigation and, like the Tribe, its interests had been represented by the United States. The district did participate in and signed the agreement that was ratified by the 1944 consent decree. Even so, the court concluded that the Tribe and district were not adverse to one another on the record, a stance commonly necessary for *res judicata* to apply. The district was thereby left as the only party vulnerable to the Tribe's claims for

additional water to protect its fishery, an ironic result that was criticized by Judge Schroeder in her partial dissent. *Id.* at 1313.

3. U.S. Supreme Court Opinion

Justice William Rehnquist began his opinion addressing this very issue and providing the rationale for reversing the court of appeals on this question. The solicitor general had characterized the court of appeals' decision (in allowing additional claims against the district) as simply allowing the reallocation of federal reclamation project water to the Indian fishery. Rehnquist indicated that Newlands Reclamation Project water rights were not "like so many bushels of wheat, to be bartered, sold, or shifted about as the Government might see fit." 463 U.S. at 126. Once surplus Indian land had been acquired by settlers, the beneficial ownership of the project water appurtenant to the surplus land also passed to the settlers. The federal government held only nominal title to those rights.

Later in the opinion, Rehnquist quoted approvingly from an Idaho Supreme Court decision: "'[I]t matters but little who are plaintiffs and who are defendants in the settlement of cases of this character; the real issue being who is first in right to the use of the waters in dispute.'" *Id.* (quoting *Morgan v. Udy*, 79 P.2d 295, 299 (Idaho 1938)). Rehnquist also observed that the United States had pleaded the separate interests of the reclamation project and the Tribe. The district had its own attorneys when the settlement was concluded. For these and other reasons, the Supreme Court reversed the court of appeals and determined that the earlier positions of

the Pyramid Lake Tribe and the Truckee-Carson Irrigation District were sufficiently adverse to enable the district to benefit from the *res judicata* defense, precluding new claims for water to support the tribal fishery.

In all other respects, the Supreme Court affirmed the lower courts. The Court emphasized the importance of *res judicata* as a doctrine of finality; otherwise, "'the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if . . . conclusiveness did not attend the judgment of such tribunals.'" *Id.* at 129 (quoting *Southern Pacific R. Co. v. United States*, 168 U.S. 1, 49 (1897)). Rehnquist elaborated in a footnote:

> The policies advanced by the doctrine of res judicata perhaps are at their zenith in cases concerning real property, land and water. . . . A quiet title action for the adjudication of water rights, such as the *Orr Ditch* suit, is distinctively equipped to serve these policies because "it enables the court of equity to acquire jurisdiction of all the rights involved and also of all the owners of those rights, and thus settle and permanently adjudicate in a single proceeding all the rights, or claims to rights, of all the claimants to the water taken from a common source of supply." 3 C. Kinney, Law of Irrigation and Water Rights § 1535, p. 2764 (2d ed. 1912).

463 U.S. at 129 n. 10.

Appendix E

The Court rejected an overly legalistic comparison of the cause of action asserted in the original *Orr Ditch* litigation and the cause of action asserted in the newer case pending before the Court. Rehnquist studied the government's amended complaint and the decree to find references to "the several rights" of the United States, the need to protect Indians' fishing, and language whereby the parties were "forever enjoined" from asserting rights in the Truckee other than those set forth in the *Orr Ditch Decree.* Rehnquist concluded:

> We find it unnecessary . . . to parse any minute differences which these differing tests [for determining *res judicata]* might produce, . . . the only conclusion allowed by the record . . . is that the Government was given an opportunity to litigate the Reservation's entire water rights to the Truckee, and that the Government intended to take advantage of that opportunity.

Id. at 131.

The majority opinion also approved of the manner in which the federal government sought to represent both the interests of the Paiute Tribe and the non-Indian irrigators in the *Orr Ditch* litigation. Distinguishing the Interior Department's obligations from those of a private fiduciary, the Court noted that Congress had required the Secretary "to carry water on at least two shoulders" and "it is simply unrealistic to suggest that the Government may not perform its obligation to represent Indian tribes in litigation when Congress has obliged it to represent other interests as well."

Id. at 128. Thus, both the United States and the Paiute Tribe (because its interests were represented by the federal government) were bound by the *Orr Ditch Decree*. *Id.* at 135.

Finally, the Court listed those parties who could use the *Orr Ditch Decree* preclusively against the federal government and the Tribe. They include the parties to the original decree, the farmers comprising the Truckee-Carson Irrigation District, and persons who appropriated Truckee River water subsequent to the *Orr Ditch Decree*. Even though mutuality[7] (a traditional requirement of *res judicata*) was lacking and these subsequent appropriators could not themselves be bound by *Orr Ditch*, the Court recognized that an exception to the mutuality requirement was warranted. These water users

> relied just as much on the *Orr Ditch* decree in participating in the development of western Nevada as have the parties of that case. We agree with the Court of Appeals that under "these circumstances it would be manifestly unjust . . . not to permit subsequent appropriators" to hold the Reservation to the claims it made in *Orr Ditch*. . . .

Id. at 144. A summary of the ability of the various parties and nonparties to the *Orr Ditch* litigation to rely on the decree is provided in Table 1.

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7. As a traditional requirement of the collateral estoppel doctrine, the mutuality rule requires that the party seeking to benefit from estoppel in the second proceeding actually have been at risk in the earlier suit. 18 JAMES WM. MOORE *ET AL.*, MOORE'S FEDERAL PRACTICE § 132.04[2][a] (3d ed. 2000).

Table 1: Preclusive Effect of *Orr Ditch Decree*

Could the Pyramid Lake Paiute Tribe assert as against these persons:	Claims for additional water rights to support the tribal fishery?
Parties and successors to the *Orr Ditch Decree*?	No. "There is no dispute that the *Orr Ditch* defendants were parties to the earlier decree and that they and their successors can rely on the decree." 463 U.S. at 136-37.
Truckee-Carson Irr. Dist. and the Project farmers it represents	No. Even though the United States earlier represented the Tribe and the Project, their interests "were sufficiently adverse so that both are now bound by the final decree entered in the *Orr Ditch* suit." *Id.* at 143.
Nonparties such as subsequent appropriators	No. They "have relied just as much on the *Orr Ditch* decree in participating in the development of western Nevada as have the parties of that case." It would be "'manifestly unjust'" not "to hold the Reservation to the claims it made in *Orr Ditch* . . . ." *Id.* at 144.

The Supreme Court's construction of this mutuality exemption is somewhat confusing. The Court recognizes that "mutuality has been for the most part abandoned in cases involving collateral estoppel," *Id.* at 143; but the Court apparently does not believe that a defensive use of collateral estoppel or issue preclusion alone would be sufficient to protect subsequent appropriators from the tribal fishery claim. Thus, the Court reaches to create a mutuality exception to the *res judicata* doctrine, which normally requires the same parties or their privities in both actions. The subsequent appropriators, however, were obviously not parties (or in privity with parties) to the original *Orr Ditch* proceeding. The Court's awkward construction of this mutuality exception favoring subsequent appropriators seems to be tacit recognition that (a) the fishery claim *could* have been litigated in the *Orr Ditch* case (justifying *res judicata* or claim preclusion) and (b) the fishery claim *was not* actually and necessarily litigated (necessary for collateral estoppel or issue preclusion in the subsequent case). *See* 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 132.03 (3d ed. 2000) [hereinafter "MOORE 3D"].

4. Comparison of *Orr Ditch* and *Globe Equity*

Orr Ditch neglected water for the important tribal fishery. The Gila River Indian Community asserts that the *Globe Equity Decree* omitted sufficient water for both decreed (allotted) lands and almost 325,000 acres of surplus reservation land. The similarities between the cases do not end there. Both proceedings were initiated on interstate rivers to assist in the construction of federal reclamation projects in water-short basins.

Appendix E

Both proceedings were initiated on interstate rivers to assist in the construction of federal reclamation projects in water-short basins. Both proceedings were brought in federal district court, went through an evidentiary phase before a special master, and resulted in the entry of consent decrees ratifying settlements reached by the parties. Both cases involved the same "cast of characters": the federal government as plaintiff, an Indian Tribe who was not a party to the litigation but whose interests were represented by the United States as trustee, existing non-Indian water users in the upper basin, non-Indian irrigators who would participate in the reclamation project and organize an irrigation district, water users who would establish their water rights subsequent to the decree. Some of the same federal attorneys worked in both cases.

Both cases involved the same types of tribal lands: (a) more arable bottom lands susceptible to easily cultivation; and (b) less arable, less desirable bench or grazing lands. The bottom lands were expected to be allotted to individual Indians in small, irrigated parcels (5 acres each of the Pyramid Lake Reservation). Most of the bench or grazing lands were expected to be transferred as "surplus" lands to non-Indians under the homestead or reclamation acts. Once owned by non-Indians, these lands would receive water, if at all, under rights and sources different from those benefiting the Indian reservation. In both cases, the consent decrees were entered *after* Congress had passed the Indian Reorganization Act that ended the federal program of allotting in severalty the lands of most Indian reservations.

But there are differences between the two cases as well.

The Gila River basin contains 57,850 square miles while the Truckee River basin extends 1,872 square miles. The *Orr Ditch* proceeding involved the entire length of the river in Nevada and all of the Truckee River tributaries in Nevada. *Globe Equity* concerned a 150-mile segment of the river, adjudicated mainstem water rights in both Arizona and New Mexico, but did not establish water rights on the tributaries.

While the Tribes in both basins have sought to revisit the old determinations, the procedural status is different. In Nevada, the United States brought a new proceeding in federal court in 1973 seeking additional rights on the Truckee River to support the tribal fishery and attempted to distinguish the earlier decree as determining only irrigation water rights for the reservation. The Pyramid Lake Paiute Tribe was allowed to intervene.

In Arizona, the United States commenced enforcement proceedings in the *Globe Equity* court and the Gila River Indian Community (along with the San Carlos Apache Tribe) was allowed to intervene in those proceedings. Now, Arizona's general stream adjudication has allowed the Community, and the United States in its behalf, to file claims more extensive than the water rights established for the Community in the *Globe Equity Decree.*

C. *Arizona v. California*

In the original *Arizona v. California* litigation, the U.S. Supreme Court determined water rights as among Arizona, California, and Nevada. 373 U.S. 546 (1963). The Court also adjudicated water rights for several federal agencies and five

Tribes having land along the mainstem of the river. The water rights determined for the reservations were based on the practicably irrigable acreage standard that had been proposed by Special Master Simon Rifkind. In that round of litigation, commonly known as *Arizona I*, the Supreme Court rejected the Master's efforts to finalize contested boundaries for two of the reservations, saying that the quantity of water for those reservations "shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined. . . ." *Arizona v. California*, 376 U.S. 340, 345 (1964) *(Decree)*. While the Court did not accept Rifkind's boundary recommendations (which yielded less acreage than alleged by the United States), the Court did quantify water rights based on the acreage Rifkind had calculated using his proposed boundaries. Later, boundary disputes arose concerning the other three reservations including the Fort Yuma Reservation, home of the Quechan Tribe. *Arizona v. California*, 460 U.S. 605, 630-31 (1983) (*Arizona II*).

In the 1970s, the Department of the Interior took several administrative steps to resolve the contested reservation boundaries. Generally, these actions were secretarial orders or solicitor's opinions "issued unilaterally and without a hearing." *Id.* at 631. One such order was a 1978 secretarial order that purported to nullify an earlier Quechan Tribe land cessation due to the failure of the United States to provide the promised consideration. *Arizona v. California*, 530 U.S. slip. op. at 9 (June 19, 2000). While several California governmental agencies sued in federal court to avoid these administrative actions, *Metropolitan Water Dist. v. United States*, Civ. No. 81-0678-GT(M) (S.D. Cal. Apr. 28, 1982),

the United States and the Tribes (after they were permitted to intervene in the original jurisdiction action) moved the Supreme Court to reopen the 1964 decree to enlarge tribal water rights based on the Department's actions.

These rights alleged by the United States and Tribes were for two types of land: (a) "omitted" lands, apparently irrigable lands within reservation boundaries that had not been claimed by the federal government in the original *Arizona I* litigation; and (b) "boundary" lands for which Master Rifkind recommended boundary adjustments. 460 U.S. at 612.

As to the omitted lands, the Supreme Court recognized the *res judicata* effect of the 1964 decree. *Id.* at 616. Except for a continuing jurisdiction provision in that decree, the Court indicated that "[t]here is no question that if these claims were presented in a different proceeding, a court would be without power to reopen the matter due to the operation of res judicata." *Id.* at 617. The exercise of continuing jurisdiction should be limited, however, and "subject to the general principles of finality and repose, absent changed circumstances or unforeseen issues not previously litigated." *Id.* at 619. The Court found neither exception to be present.

In language foreshadowing the Supreme Court's *Orr Ditch* decision issued later that term, the Court addressed any conflict of interest issues involving the federal government as follows:

> We find no merit in the Tribes' contention that the United States' representation of their interests was inadequate whether because of a claimed

> conflict of interests arising from the Government's interest in securing water rights for other federal property, or otherwise. The United States often represents varied interests in litigation involving water rights, particularly given the large extent and variety of federal land holding in the West.

Id. at 627.

As to the boundary lands, the Court disagreed with Special Master Elbert P. Tuttle that the boundary issues had been "finally determined" by secretarial action. *Id.* at 636. The Court recalled that in the original proceedings before Master Rifkind, all parties had contemplated *judicial* resolution of the boundary issues. *Id.* at 637.

The Court, therefore, urged resolution of these issues in the action still pending in the *Metropolitan* case or in another available judicial forum. *Id.* at 639.

The boundary issues were not resolved in federal district court as the United States finally prevailed on its claim of sovereign immunity in that litigation. *California v. United States*, 490 U.S. 920 (1989) *(per curiam)*. The Colorado River Basin States, without opposition from the United States or Tribes, then asked the Supreme Court to determine whether Fort Yuma and other Tribes were entitled to the disputed boundary lands, and if so, to adjudicate additional water rights. 530 U.S. at __, slip. op. at 5. Proceedings before Special Master Frank McGarr resulted in his recommendation that no additional water rights be awarded.

Appendix E

The Supreme Court disagreed with the Special Master's result and his reasoning. The Special Master recognized the *res judicata* effect of a Court of Claims judgment in the Quechan Tribe's favor (a basis promptly rejected by the Court) but afforded no *res judicata* effect to the *Arizona I* proceedings because of changed circumstances, *i.e.*, the 1978 secretarial order. The Court also rejected this reasoning, saying "[t]he 1978 Order did not change the underlying facts in dispute; it simply embodied one party's changed view of the import of unchanged facts." 530 U.S. at __, slip. op. at 13. Ultimately, the Court did allow the Quechan Tribe to pursue its claims for additional water, finding that the States' "preclusion defense is inadmissible at this late date . . . ." *Id.* The tribal claims concerning the boundary lands were returned to the Special Master for a determination on the merits. 530 U.S. at __ slip. op. at 25.

The totality of this litigation establishes several principles that are important to the resolution of our case. First, the Supreme Court considers the stability of land and water right titles to be of great importance in the West:

> Our reports are replete with reaffirmations that questions affecting titles to land, once decided, should no longer be considered open. Certainty of rights is particularly important with respect to water rights in the Western United States . . . . Recalculating the amount of practicably irrigable acreage runs directly counter to the strong interest in finality in this case.

460 U.S. at 620.

Second, the Court could find no reason to excuse the United States' failure to assert water rights for the omitted lands undisputedly within the reservation. This holding supports the moving parties here who contend that the United States' earlier failure to establish water rights for the surplus lands on the Gila River Indian Reservation is of no legal consequence now.

Third, the "changed circumstances" exception to the finality of past adjudications is to be narrowly drawn. The Court affords little legal significance to a subsequent event, the 1978 secretarial order, indicating that it did not alter the underlying facts in dispute, *i.e.*, the reservation's water rights entitlement. 530 U.S. at __, slip op. at 13. This suggests that even less significance should be given to events that preceded the *Globe Equity Decree*, such as the passage of the 1934 Indian Reorganization Act, ending the allotment period, or even subsequent developments in the federal reserved water rights doctrine.

D. *Findings of Fact*

With the discussion of this important litigation in mind, I return to the *Globe Equity Decree* and address the preclusive effect of this federal court determination. I begin by enumerating those material facts necessary to my decision, which continue to tell the story of the *Globe Equity No. 59* litigation (drawn from the statements of fact submitted by the parties), about which there appears to be no genuine issue or dispute.[8] *See* ARIZ. R. CIV. P. 56(c).

8. Findings of fact and conclusions of law are numbered consecutively throughout the report for easy reference and to avoid confusion.

Appendix E

1. *Finding of Fact No. 1.* The Gila River Indian Reservation was created by Congress in 1859. Act of Feb. 28, 1859, 11 Stat. 401 [OSM No. 112].

2. *Finding of Fact No. 2.* The Gila River Indian Reservation was enlarged through a series of presidential executive orders issued between 1876 and 1915. Exec. Order (Aug. 31, 1876) [OSM No. 134], *as modified by* Exec. Order (Aug. 27, 1914) [OSM No. 144]; Exec. Order (June 14, 1879) [OSM No. 136]; Exec. Order (May 5, 1882) [OSM No. 137]; Exec. Order (Nov. 15, 1883) [OSM No. 138]; Exec. Order (July 31, 1911) [OSM No. 141]; Exec. Order (June 2, 1913) [OSM No. 143]; and Exec. Order (July 19, 1915) [OSM No. 146].

3. *Finding of Fact No. 3.* On February 8, 1887, Congress passed the Dawes or Indian General Allotment Act. Ch. 119, 24 Stat. 388 (Feb. 8, 1887). This legislation set forth the federal Indian policy, known as the Assimilation Period, that extended until 1934 when the Indian Reorganization Act was passed. Ch. 216, 48 Stat. 984 (June 18, 1934). The allotment program contemplated that Indian reservations including the Gila River Indian Reservation would be broken up, irrigable tribal lands conveyed to individual Indians, and remaining surplus tribal lands sold for development.

4. *Finding of Fact No. 4.* By no later than 1872, upstream settlers in the Safford and Duncan-Virden Valleys and in the Florence-Casa Grande area settled along the Gila River and began diverting water from the river for irrigation. PRELIMINARY HSR at C-4. After these diversions began, federal authorities and members of the Gila River Indian

Reservation complained that the Gila Indians were being deprived of water that was rightfully theirs. Bill of Complaint at 5-6, *United States v. Gila Valley Irr. Dist.*, Globe Equity No. 59 (D. Ariz. June 29, 1935) [hereinafter "*Globe Equity No. 59*"] [OSM No. 293].

5. *Finding of Fact No. 5.* The San Carlos Project, among the West's first federal reclamation projects, was envisioned when the federal Reclamation Act was passed in 1902. The Project was built following a series of congressional enactments beginning with the construction of the San Tan Canal in 1905 and the Florence-Casa Grande Irrigation Project in 1916 (authorizing two diversion dams and canals). Act of Mar. 3, 1905, 33 Stat. 1081 [OSM No. 116]; Act of May 18, 1916, 39 Stat. 123-30 [OSM No. 124].

6. *Finding of Fact No. 6.* In 1924, Congress authorized the San Carlos Project itself and the construction of what would be known as Coolidge Dam across the Gila River near San Carlos, Arizona. An Act for the Continuance of Construction Work on the San Carlos Federal Irrigation Project in Arizona and for Other Purposes, 43 Stat. 475-476 (June 7, 1924) [OSM No. 129]. The act stated that the purpose of the Project would be:

> [F]irst, of providing water for the irrigation of lands allotted to Pima Indians on the Gila River Indian Reservation, Arizona, now without an adequate supply of water and, second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served with water impounded by said dam

> without diminishing the supply necessary for said Indian lands: *Provided*, That the total cost of the project shall be distributed equally per acre among the lands in Indian ownership and the lands in public or private ownership that can be served from the waters impounded by said dam.

Id.

7. *Finding of Fact No. 7.* The San Carlos Project was intended to be a "combined Indian and white man's irrigation project." Pima Indians and the San Carlos Irrigation Project Hearing on S. 966 Before the House Committee on Indian Affairs, 68 Cong., 1st Session, at 3 (1924). Non-Indian participation in the project was deemed necessary in order to pay for its construction costs. The project was expected to provide water to between 80,000 and 90,000 acres. *Id.* at 35.

8. *Finding of Fact No. 8.* In 1924, the Secretary prepared and subsequently executed a "Landowners' Agreement with the Secretary of the Interior, San Carlos Project: Act of June 7, 1924," as required by the 1924 legislation. The 1924 Landowners' Agreement provided that up to 50,000 acres of Indian allotted lands on the Gila River Indian Reservation could receive water from the San Carlos Project. [OSM No. 153 at 9].

9. *Finding of Fact No. 9.* On October 2, 1925, the United States, on behalf of itself and the Indians living on the Gila River Indian Reservation and the San Carlos Apache Reservation, filed a Bill of Complaint in *Globe Equity No. 59* in the U.S. District Court for the District of Arizona to

adjudicate the waters of the Gila River. The Gila Valley Irrigation District, Franklin Canal Company, and numerous other farmers and diverters in the Safford and Duncan-Virden Valleys were named as defendants [hereinafter "Upper Valley Defendants"]. Bill of Complaint, *Globe Equity No. 59* [OSM No. 293].

10. *Finding of Fact No. 10.* The United States represented multiple interests in the litigation, including the interests of the water users who subsequently formed the San Carlos Irrigation and Drainage District. Edward Smith, Special Assistant to the U.S. Attorney General, stated:

> To put it another way, we have the Government representing itself and the Indians and also representing the water users of the Florence-Casa Grande Valley by reason of the contract [landowner agreements]; opposed to them are the water users of the three districts in the upper valley....

Letter from Edward A. Smith, Special Assistant to the U.S. Attorney General to the U.S. Attorney General (Aug. 8, 1927) at 13-14 [OSM Nos. 5215 and 5216].

11. *Finding of Fact No. 11.* The Bill of Complaint alleged, among other things, that the United States had "reserved and appropriated . . . all of the waters of the said Gila River and its tributaries . . . which may be necessary for the economical and successful irrigation and cultivation" of the lands of the Gila River Indian Reservation. [OSM No. 293, at 21]. It requested that the Court "determine the relative

rights of the parties hereto . . . into and of the waters of the said Gila River. . . ." *Id.* at 23.

12. *Finding of Fact No. 12.* Answers to the Bill of Complaint were filed by the Gila Valley Irrigation District, the Franklin Irrigation District, and farmers and water users in those districts. Answer of the Gila Valley Irr. Dist. *et al.*, *Globe Equity No. 59* (Jan. 30, 1926) [OSM No. 1888]; Answer of the Franklin Irr. Dist. *et al.*, *Globe Equity No. 59* (Mar. 8, 1926) [OSM No. 302].

13. *Finding of Fact No. 13.* Two years after filing the original complaint, the United States filed an Amended Complaint, again naming the Upper Valley Defendants as defendants. Amended Complaint, *Globe Equity No. 59* (Dec. 5, 1927) [OSM No. 5261].

14. *Finding of Fact No. 14.* The Amended Complaint in *Globe Equity No. 59* limits the territorial scope of the adjudication to an area along the Gila River "as it flows between a line 10 miles east of the parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, and after the following tributaries of the Gila River, the San Francisco River, the San Carlos River, the San Pedro River, and the Santa Crus [sic] River, respectively, have joined the main stream. . . ." *Id.* at 32-33.

15. *Finding of Fact No. 15.* The Amended Complaint alleged, among other things:

a. That the suit was "brought by the United States for itself and as Trustee and Guardian for the Pima and

Apache Indians, occupants and possessors of large areas of land with water rights appertaining thereto in the Gila River Indian Reservation . . . ." *Id.* at 11, ¶3.

b. "That the Pima Indians, from time immemorial until the first reservation was made for them by the United States . . . occupied and possessed a large area of land on the Gila River . . . which area included the lands now embraced in the Gila River Indian Reservation. . . . With the lands of said reservation, the Pima Indians also did and do occupy and possess to a large extent the usufruct of the waters of the Gila River, and with said waters at all times have irrigated large areas of said land. The waters thus possessed by said Indians are a quantity sufficient to irrigate the lands subsequently allotted to them as irrigable allotments, said allotments being made to individuals among said Indians and amount to 49,896 acres. . . ." *Id.* at 17-18, ¶¶5-6.

c. That "the United States, by a series of acts of Congress, proclamations, and Executive orders . . . recognized that the lands and waters . . . belonged to the Pima Indians under their title of occupancy and possession and confirmed and made more secure those rights as far as they covered or related to said reservation, and reserved for said Indians the lands and water rights comprised in or connected with the Gila River Indian Reservation. The lands in said reservation are situate in the Counties of Pinal and Maricopa, and comprise about 375,422 acres." *Id.* at 18-19, ¶7(a).

d. That "[t]he water rights reserved in connection with the reservation of said land for the Pima Indians are alleged to be the following, to wit: So much of the waters of

the Gila River as should be needed to carry out the purposes of the United States in recognizing and in making said reservation of lands, and also in accomplishing the civilization and bringing about the prosperity of said Indians." *Id.* at 19, ¶7(b).

16. *Finding of Fact No. 16.* For relief, the United States requested in its Amended Complaint that the Court "determine the rights of the parties hereto to the waters of said river and its tributaries and the right of said parties to divert water from said river within the area aforesaid and for storage above, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and for what purposes, where, by means of diversion and with what priorities." *Id.* at 34.

17. *Finding of Fact No. 17.* The United States, in its brief filed on December 6, 1927, one day after the amended complaint, discussed the scope of the litigation: "This suit is one to adjudicate water rights within a specified area of the Gila River. . . . The idea is to settle rights of diversion along this stretch of the stream, excluding, however, rights to divert water of the tributaries. . . ." Brief of the United States at 1, *Globe Equity No. 59* (Dec. 6, 1927) [OSM No. 10127].

18. *Finding of Fact No. 18.* John Truesdell, a principal federal attorney involved in *Globe Equity No. 59*, summarized the legal theories that were asserted in the litigation:

a. Rights based on "the Indian right of occupancy and possession prior to the advent of the white man."

b. Rights based upon the "reservations of water made by the United States when Arizona was a territory."

c. Rights based upon "the doctrine of the Winters case" [*Winters v. United States*, 207 U.S. 564 (1908) (recognizing the federal reserved rights doctrine)].

d. Rights based upon "reservations of water made by the United States after Arizona became a State under the doctrine of federal ownership of the usufruct of innavigable waters in the public-land states."

e. Rights based upon "simple appropriations."

Letter from John F. Truesdell, Superintendent of Irrigation, to Edward A. Smith, Special Assistant to the Attorney General at 2-3 (Dec. 13, 1926) [OSM No. 5154].

19. *Finding of Fact No. 19.* John F. Truesdell also discussed the purpose and geographic scope of the litigation:

> The object of the suit is to adjudicate rights to divert water from the Gila River within a defined area, or store it above for use within that area. The suit is in the nature of one to quiet title to real estate. This suit is one to adjudicate water rights within a specified area of the Gila River. That area is defined in the complaint and roughly embodies the stretch of the river extending from the lower or western end of the Gila River Indian Reservation, up that stream, to a line parallel with the boundary between the States of Arizona and New Mexico, but 10 miles east thereof.

Truesdell also indicated that the "idea [of the suit] is to settle rights of diversion along this stretch of the stream, excluding, however, rights to divert water of the tributaries." This would create an "opportunity" for a "full settlement of rights within that area—a settlement between the defendants among themselves, if they so desire, as well as a settlement between the defendants and the plaintiff." Draft Brief of the United States, forwarded by J. Truesdell to G.A. Iverson, Special Assistant to the U.S. Attorney General (Nov. 30, 1927) [OSM Nos. 5259 & 15808].

20. *Finding of Fact No. 20.* John F. Truesdell also discussed the United States' claim for adjudicating a quantity of water for the Gila River Indian Reservation:

> The utmost quantity of water that could be reserved in a stream in the Western States for irrigation purposes would be the amount needed to irrigate all of the irrigable lands on the reservation. But obviously that is only one limit. There are others—such as the number of Indians—and all sorts of other things which go to measure the needs of the Government to carry out its purpose. In practice, we have usually adopted as the best index of those needs, the practice of the Government in alloting [sic] irrigable lands to the Indians and using irrigable lands on the reservation for administrative areas. We, therefore, in this case, claim as our outside claim, under the Indian Title and the broad doctrine of Federal ownership and the doctrine of the Winters case, the quantity of water needed to irrigate the Indian

> allotments and the administrative area, which together amount practically to 50,000 acres.

Letter from John F. Truesdell, Superintendent of Irrigation, to Edward A. Smith, Special Assistant to the U.S. Attorney General at 8 (Aug. 3, 1927) [OSM No. 5210].

21. *Finding of Fact No. 21.* As to other reservation lands not included in this 50,000-acre figure, Truesdell indicated that "[w]e are keeping fully in mind the fact that the Pima Indians will have a vast area beyond this that will be susceptible of irrigation and perhaps can be irrigated by wells, return flow water or otherwise." Letter from John F. Truesdell to Pima Agency (Aug. 4, 1924) [OSM No. 5025].

22. *Finding of Fact No. 22.* The Gila Valley Irrigation District and Franklin Irrigation District filed answers to the Amended Complaint, denying many of the allegations, including the claims that the United States had reserved water rights for the Gila River Indian Reservation. Answer of Gila Valley Irr. Dist. *et al.*, *Globe Equity No. 59* (Aug. 18, 1928) [OSM No. 360]; Answer to Amended Bill of Complaint by Franklin Irr. Dist. *et al.*, *Globe Equity No.* 59 (Jan. 5, 1929) [OSM No. 15674].

23. *Finding of Fact No. 23.* The Court appointed a Special Master, Califford R. McFall, who heard arguments and testimony and admitted exhibits. Index of Exhibits and Transcript of Court Proceedings, Vol. 1 & 2, *Globe Equity No.* 59 [OSM Nos. 15678 & 15679].

Appendix E

24. *Finding of Fact No. 24.* After filing of the Complaint and the Amended Complaint, the United States and the Upper Valley Defendants engaged in settlement negotiations for many years. Letter from John F. Truesdell, Superintendent of Irrigation, to Charles Burke, Commissioner of Indian Affairs (Feb. 1, 1929) [OSM No. 393].

25. *Finding of Fact No. 25.* The negotiations eventually resulted in a draft consent decree. Letter from Homer Cummings, U.S. Attorney General, to Harold L. Ickes, U.S. Secretary of Interior at 2 (May 3, 1934) (the proposed consent decree "is purposed to take care of the rights of all litigants who are deemed necessary to a complete adjudication") [OSM No. 584].

26. *Finding of Fact No. 26.* Ethelbert Ward, another Special Assistant to the U.S. Attorney General, worked to ensure that the proposed consent decree correctly included all necessary defendants. In a progress report to the U.S. Attorney General, dated November 28, 1933, Ward explained the changes in the number of defendants in the suit since the filing of the original Bill of Complaint:

> The original bill of complaint named 420 defendants as claiming diversion rights from the Gila river [sic] and from its tributaries. The amended bill of complaint named 1364 defendants as claiming diversion rights from the Gila river [sic] only and not from its tributaries. The proposed decree sought to be consented to by all parties names something over 1700 defendants as claiming diversion rights from the Gila river [sic] only.

Appendix E

Letter from Ethelbert Ward to the U.S. Attorney General (Nov. 28, 1933) [OSM Nos. 1286 & 17179].

27. *Finding of Fact No. 27.* Between the filing of the original bill of complaint and the entry of the consent decree, several hundred defendants were dismissed from the litigation without prejudice, many of whom maintained water uses on tributaries to the Gila River. Letter from Ethelbert Ward to the U.S. Attorney General (Dec. 14, 1933) [OSM No. 5607]; Order Setting Aside Order Pro Confesso and Dismissing as to Certain Defendants, and Order Dismissing Certain Defendants, *Globe Equity No. 59* (both dated Mar. 30, 1935) [OSM Nos. 5687 & 5688]; *see also Globe Equity Decree* art. I & III [OSM No. 4].

28. *Finding of Fact No. 28.* Between the filing of the original bill of complaint and the entry of the consent decree, Congress passed the Indian Reorganization Act effectively ending the allotment and assimilation period of federal Indian policy. The IRA encouraged Indian self-government and self-determination including Indian control over their property and resources.

29. *Finding of Fact No. 29.* The draft consent decree, which was to "definitely determine [ ] the rights of all landowners on the river," was reviewed and approved by the U.S. Attorney General and the Secretary of Interior. Letter from John Collier, Commissioner of Indian Affairs, to Rudolph Johnson, President of Pima Indian Tribal Council at 1 (June 24, 1935) [OSM No. 656].

Appendix E

30. *Finding of Fact No. 30.* On June 25, 1935, the Pima Indian Tribal Council moved to intervene in *Globe Equity No. 59* as representatives of the Indians on the Gila River Indian Reservation. Petition for Leave to Intervene, *Globe Equity No. 59* (June 25, 1935) [OSM No. 659]. The Court denied the motion. Minute Entry, *Globe Equity No. 59* (June 29, 1935) [OSM No. 5720].

31. *Finding of Fact No. 31.* The proposed consent decree was entered by U.S. District Court Judge Albert M. Sames in *Globe Equity No. 59* on June 29, 1935. The Gila Decree still governs diversions from the Gila River. Final Decree, *Globe Equity No. 59* [OSM No. 4].

32. *Finding of Fact No. 32.* At the time the *Globe Equity Decree* was entered, the Gila River Indian Reservation constituted approximately 375,422 acres. Amended Complaint at 19, ¶7(a) [OSM No. 5261].

33. *Finding of Fact No. 33.* Some of the rights of the United States on behalf of the Gila River Indian Reservation are stated in Article VI of the *Globe Equity Decree* as follows:

a. "The right on behalf of the Pima and other Indians of the Gila River Indian Reservation, their descendants, successors and assigns, to divert 210,000 acre feet of the waters of the Gila River . . . as of an immemorial date of priority . . . for the reclamation and irrigation of the irrigable Indian allotments on said reservation, which amount to 49,896 acres, as they now are or hereafter may be made, and of the administrative area on said Reservation which amounts to 650 acres, to the extent that the herein described water right, which is sufficient for and limited to the needs of

35,000 acres, will reclaim and irrigate the same." Art. VI, ¶1 [OSM No. 4, at 86].

b. "The right to divert 372,000 acre feet of the waters of the Gila River. . . . for the reclamation and irrigation of the 62,000 acres of the irrigable lands of the so-called Florence-Casa Grande Project, or its equivalent, more particularly described as follows: (a) The aforesaid Indian allotments now or hereafter made on the said Indian Reservation, and the said administrative area, amounting in the aggregate to 50,546 acres [49,896 + 650]. . . ." *Id.*

c. "The right to divert 603,276 acre feet of the water of the Gila River . . . for the reclamation and irrigation of the 100,546 acres of the irrigable lands of the San Carlos Project . . . said 100,546 acres of project lands being more particularly described as follows: (a) 49,896 acres of land within the Gila River Indian Reservation which have been, or may be allotted to individuals among the Indians thereof. . . . *Id.* at 98.

34. *Finding of Fact No. 34.* Article XIII of the *Globe Equity Decree* states as follows:

> [E]ach and all of the parties to whom rights to water are decreed in this cause . . . their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through, or under them and their successors, are hereby forever enjoined and restrained from asserting or claiming—as against any of the parties herein, their assigns or successors, or their rights as decreed herein—any right, title or interest in or

> to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree . . . the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.

Art. XIII [OSM No. 4, at 113].

E. *Conclusions of Law*

As these facts illuminate, the *Globe Equity* litigation was pitched on the divide between two periods of American Indian law. The general allotment period, which commenced with the passage of the Dawes Act in 1887, came to an ignoble end in 1934 with the enactment of the Indian Reorganization Act (IRA). While millions of acres of tribal land had passed into non-Indian ownership during this half-century, the IRA slowed the fragmentation of Indian lands, renewed the federal government's commitment to reservation life, and reinvigorated tribal governments.

While the IRA ended the allotment program, the legislation did not alter the United States' *Globe Equity* litigation strategy, focused as it had always been on acquiring water for the 50,000 acres of reservation land anticipated to pass to Indian allottees. The federal attorneys had originally assumed the balance of the reservation, consisting of less desirable lands, would be transferred as surplus lands to non-Indians under federal homestead laws or in other transactions. These litigation decisions were made with little or no

consultation with the tribe or tribal members. Indeed, the United States opposed the attempt of the Pima Indian Tribal Council (precursor of the present tribal government and, at the time, apparently encouraged by the IRA's self-government pronouncements) to intervene in *Globe Equity* days before the consent decree was entered.

Because of the IRA, the surplus lands on the Gila River Indian Reservation largely did *not* pass into non-Indian hands; and the Community is left with a *Globe Equity* water rights entitlement that omits much of its land base. The Community and the United States have both used the opportunity afforded by the Gila River adjudication to assert additional claims to both lands decreed under *Globe Equity* and for the surplus lands that were not awarded water. These claims are vigorously opposed by two groups: upper valley water users who were original parties (or privities to such parties) to the *Globe Equity* litigation and who rely on the *res judicata* doctrine, and other water users in the Gila River system who say they have reasonable and settled expectations in the nature and extent of the reservation's water rights as defined by *Globe Equity No. 59*.

More specifically, the preclusive effect of the decree is best established by referring to four specific groups of persons:

1. Persons who were parties to the original *Globe Equity* litigation and who are also before the court in the Gila River adjudication, *e.g.*, the United States, Gila Valley Irrigation District.

2. Successors and privities of persons who were parties to the original *Globe Equity* litigation and who are now before the court in the Gila River adjudication in their own right, *e.g.*, the Gila River Indian Community.

3. Persons or their privities who had water rights in the Gila River system when the *Globe Equity Decree* was entered but were not joined in that litigation or dismissed from it. These persons may have used water upstream in New Mexico, on the Gila's tributaries, or downstream from the area adjudicated in the federal decree.

4. Persons who were not parties to the *Globe Equity* litigation but who have established water rights anywhere in the Gila River system (mainstem or tributaries) since entry of the *Globe Equity Decree.* (While this category may be further divided, such distinctions are unnecessary here).

Groups 1 and 2 raise the question of *res judicata* (claims preclusion). Groups 3 and 4 raise the question of collateral estoppel (issue preclusion). Before addressing these *res judicata* and collateral estoppel issues, I must decide whether federal or Arizona law specifies the requirements to be satisfied before the *Globe Equity Decree* can be afforded *res judicata* or collateral estoppel effect in this adjudication.

1. Choice of Law

The moving parties argue that the federal law of *res judicata* must be applied to determine the claim preclusion

effect of the *Globe Equity Decree* in this adjudication. The Community responds that Arizona law defines *res judicata* for purposes of this proceeding (although they also argue that even under federal law, *res judicata* does not apply).

a. *Conclusion of Law No. 1.* The general rule is that the *res judicata* effect of a federal court judgment is determined by federal law. 1B JAMES WM. MOORE *ET AL.*, MOORE'S FEDERAL PRACTICE ¶¶ 86 & *87* (2d ed. 1996) [hereinafter "MOORE 2D"]. The same rule applies in determining the collateral estoppel effect of a prior judgment, an issue also implicated here. This choice of law selection is especially appropriate when the federal interest was strong in the earlier litigation.

b. *Conclusion of Law No. 2.* The federal law of *res judicata* and collateral estoppel must be applied to determine the preclusive effect of the *Globe Equity Decree* for purposes of this case. This is because the federal interest in the *Globe Equity* litigation was especially strong. The *Globe Equity* litigation involved many federal concerns, *i.e.*, water rights for two Indian reservations, water supply for a federal reclamation project, and an interstate river. Also, Arizona courts have recognized that the law of the jurisdiction in which the judgment was entered should define the prelusive effect of the judgment. *See, e.g., Lofts v. Superior Court*, 140 Ariz. 407, 410, 682 P.2d 412, 415 (1984); *Bill Alexander Ford, Lincoln Mercury, Inc. v. Casa Ford, Inc.*, 187 Ariz. 616, 618, 931 P.2d 1126, 1128 (App. 1996) (Arizona courts follow RESTATEMENT (SECOND) OF CONFLICTS OF LAW (1971), which indicates that effect of valid judgment is determined with reference to the law under which it was rendered).

Appendix E

2. Federal Doctrine of *Res judicata*

Res judicata is a fundamental social and legal doctrine of finality for disputes that have been fully heard and decided by a fair tribunal. A cause of action asserted and decided once cannot be asserted between the same parties again. The law "prevents an encore" after a party has an opportunity to present his or her case and the matter has been decided. Time and later circumstances may demonstrate the decision to have been ill-advised or incorrect, but the public interest remains strongly against reopening settled controversies.

Federal law, which defines the *res judicata* doctrine for purposes of this case, compares the causes of action or claims asserted in the earlier and later actions to ascertain whether they are the same. The doctrine necessitates that the parties involved in the second case be the same as those in the first proceeding, or be the successors or "privities" of the earlier litigants. The concept of "privity" usually refers to (a) persons having a concurrent relationship to the same property (*e.g.*, trustee—beneficiary); (b) persons having a successive relationship to the same property (*e.g.*, vendor—vendee); or (c) one person representing the interests of another person (*e.g.*, agent). 1B MOORE 2D ¶ 0.411[1]. Generally, a claim or cause of action consists of all of plaintiff's rights to remedies against a defendant arising out of the same transaction or series of transactions. The claim or cause of action "is defined by the injury for which the claimant seeks redress and not by the legal theory on which the claimant relies." *Id.* ¶0.410[1].

Appendix E

Relying on *Nevada v. United States*, the moving parties argue strongly that the Community's Gila River adjudication claims or causes of action are the same as those in *Globe Equity*. Since the moving parties or their predecessors were parties to *Globe Equity*, they should benefit from those earlier determinations. The statements of claimant filed in this adjudication by the Community and the United States advance a broad array of water rights for the reservation. Many undisputed material facts, however, support the conclusion that this same portfolio of claims was asserted earlier by the United States in *Globe Equity*. This is most convincingly demonstrated in the language of the amended complaint, *e.g.*, "[t]he water rights reserved in connection with the reservation of said land for the Pima Indians are alleged [as] . . . So much of the waters of the Gila River as should be needed to carry out the purposes of the United States in recognizing and in making said reservation of lands, and also in accomplishing the civilization and bringing about the prosperity of said Indians." Amended Complaint ¶ 7(b) [OSM No. 5261]; *see* Finding of Fact No. 15(d), *supra*. John F. Truesdell's summary of legal theories asserted in *Globe Equity* also persuasively demonstrates that the federal government placed in issue its complete portfolio of claims. *See* Finding of Fact No. 18. *Orr Ditch* clarifies that the consideration of the amended complaint is an appropriate inquiry. *See* 463 U.S. at 133.

The Community develops a two-pronged defense to the moving parties' *res judicata* argument. The Community begins by specifying numerous examples of supposed ambiguity or uncertainty the Community believes rise to the level of disputed material facts. The Community then

develops four principal, legal arguments why *res judicata* cannot bar its claims in this adjudication, *i.e.*, consent decrees do not quality for *res judicata* or preclusive effect, the causes of action are different, the parties are different, and circumstances have changed significantly since 1935 making inequitable a preclusive application of the earlier decree. Since I believe the resolution of the Community's legal arguments disposes of many of the factual questions, I take up these arguments first.

a. Consent Decrees

The law is settled that a consent judgment, such as the *Globe Equity Decree*, is entitled to *res judicata* in the same fashion as judgments entered after the completion of litigation. While some decisions have denied *res judicata* effect to a consent decree, saying it is simply a contract, this approach is disfavored. A leading commentator has said, "The [consent] judgment is not, like the settlement agreement out of which it arose, a mere contract *inter partes*. The court is not properly a recorder of contracts; it is an organ of government constituted to make judicial decisions, and when it has rendered a consent judgment it has made an adjudication." 1B MOORE 2D ¶ 0.409[5].

[1] *Conclusion of Law No. 3.* Although entered as a consent decree, the *Globe Equity Decree* may have *res judicata* effect, so long as the other requirements of the *res judicata* or claim preclusion doctrine are satisfied.

b. Same Claim or Cause of Action

The Community argues that its Gila River adjudication claims vary from the rights asserted in *Globe Equity* because the latter claims require different evidence and modes of proof. The Community suggests that different evidence will be necessary to prevail on legal theories that were not asserted in *Globe Equity*, principally the reserved water rights or *Winters* doctrine to establish water rights for lands omitted from the 1935 decree; and to establish water quantities using methods (practicably irrigable acreage (PIA)) that were not recognized in 1935. The Community also goes to great length to distinguish the geographic scope of the two proceedings. GRIC's Response at 21-22.

I have already determined that federal law, focused on the respective causes of action or claims, and not Arizona's "same evidence test," applies to determine the preclusive effect of the federal court decree. In any event, the Community's specification of different legal theories and evidence is unpersuasive. A litigant has an obligation to assert all his legal theories arising from a cause of action in the first instance. A leading treatise indicates, "As a general principle, then, the plaintiff must assert in his first suit all the legal theories that he wishes to assert, and the failure to assert them does not deprive the judgment of its effect as res judicata." 1B MOORE 2D ¶ 0.410[1] (footnotes omitted); *see also id.* at III-193 ("the prevailing view in the courts is in favor of requiring a plaintiff to present in one suit all the claims for relief that he may have against the defendant arising out of the same transaction or occurrence"). The federal attorneys bringing the *Globe Equity* litigation were

aware of the reserved rights doctrine, whether or not it is encapsulated in the decree, as is readily apparent from the documents accompanying the motion. *See* Finding of Fact No. 18, *supra.* Here, as in *Orr Ditch*, the federal government "placed in issue the full Reservation cause of action." 649 F.2d at 1302.

The U.S. Supreme Court itself has indicated that different legal theories do not support an effort to assert in a second round of litigation those remedies that could have been brought in earlier litigation. In *United States v. Southern Ute Tribe or Band of Indians*, 402 U.S. 159 (1971) (Brennan, J.), Congress had passed two statutes (1880 and 1895) terminating the Ute's ownership of lands in southwestern Colorado, the second statute being necessary because the Southern Ute had failed to relocate to Utah. In 1950, the Southern Ute obtained an award from the Indian Claims Commission under the 1880 statute. The Court ruled that a second effort a year later to bring a claim under the 1895 statute, essentially a different legal theory, was barred by *res judicata.*

The differences in geographic scope between the *Globe Equity* litigation and the present adjudication also do not support the conclusion that a new claim or cause of action is being asserted in the Gila River adjudication. For its time, *Globe Equity* was a large case, encompassing most of the settled area of the entire basin adjudicating thousands of relative rights of water users along that segment of the river. It is roughly comparable to the area adjudicated in *Orr Ditch.* The U.S. Supreme Court has recognized that the adjudication of entire river system is unnecessary to qualify the proceeding

as a general stream adjudication for McCarran Amendment purposes.[9] *United States v. District Court*, 401 U.S. 520, 523 (1971) (*Eagle County*) ("We deem almost frivolous the suggestion that the Eagle and its tributaries are not a 'river system' within the meaning of the Act. No suit by any State could possibly encompass all of the water rights in the entire Colorado River which runs through or touches many States."). While the Gila River adjudication comprises the entire basin, the main purpose of this proceeding is the same as in *Globe Equity:* to determine the existing water rights of the parties. *See* ARIZ. REV. STAT. ANN. § 45-252 (1994).

The key to this examination is whether the underlying federal claims or causes of action are the same, and they are. From 1925 to 1935, the federal government, as trustee, sought to establish the water rights for its beneficiaries, the Indians residing on the Gila River Reservation. In retrospect, the federal government may have performed this task poorly, omitting almost 325,000 acres of land from its calculus of water necessary for the reservation. But the federal government had the opportunity—indeed, the obligation—to assert all aspects of its claim; and the language of the decree itself speaks to that aim, *e.g.*:

- The United States is authorized to divert from the Gila River water for those rights "owned by the United States for and on account of the Indians of the Gila River and San Carlos Indian Reservations . . . ." Art. V.

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9. 43 U.S.C. § 666 (1986). The McCarran Amendment is a congressional waiver of federal sovereign immunity allowing the adjudication of federal water rights in comprehensive general stream adjudications.

- The United States "has and owns rights in the waters of the Gila River, and in and to the use of said waters, as follows: [listing of rights]." Art. VI.

- The parties to the decree, including the United States "are hereby forever enjoined and restrained from asserting or claiming—as against any of the parties herein, their assigns or successors, or their rights as decreed herein—any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree. . . ." Art. XIII.

The federal government's failure to adequately assert all aspects of the Community's claims have properly been the subject of various actions brought by the Community in other forums.

[1] *Conclusion of Law No. 4.* In the *Globe Equity* litigation, extending from 1925 to 1935, the United States was obligated to assert all of its claims to water in the mainstem of the Gila River on behalf of the Indians of the Gila River Reservation, including any rights claimed under the federal reserved water rights doctrine.

[2] *Conclusion of Law No. 5.* The United States represented the interests of the Gila River Indian Community and the members of that community in the *Globe Equity* litigation. The United States, as trustee, held the legal title to the land and appurtenant water rights considered in that proceeding. The Community and its members held equitable title.

[3] *Conclusion of Law No. 6.* As to the water rights pledged to the San Carlos Project, the United States represented the interests of the San Carlos Irrigation and Drainage District and its members in the *Globe Equity* litigation.

[4] *Conclusion of Law No. 7.* In the *Globe Equity* litigation, the United States did intend and did indeed place in issue any and all claims it could assert to water in the mainstem of the Gila River on behalf of the Indians of the Gila River Reservation.

[5] *Conclusion of Law No. 8.* The *Globe Equity Decree* has *res judicata* or claim preclusion effect. As to original *Globe Equity* parties, their successors, or their privities, neither the United States nor the Indian Community may assert in the Gila River adjudication any additional water rights to the mainstem of the Gila River as these claims are the same claims or causes of action asserted in the *Globe Equity* litigation. The only water right claims not precluded are any claims for appropriative or reserved water rights for land acquired or withdrawn since the entry of the *Globe Equity Decree.*

c. Same Parties

The Gila River Indian Community argues that *res judicata* cannot be granted because the parties involved in *Globe Equity* are different from those involved in the present adjudication. The Community's central point is that water users outside the upper Gila region were left out of *Globe Equity* while the present adjudication includes most of these

users. *Globe Equity* involved the United States and many of the same Upper Valley Defendants who are now claimants in the Gila River adjudication, while neither the Community nor the San Carlos Irrigation and Drainage District were parties to *Globe Equity* (although SCIDD through its attorney ultimately signed the consent decree). Since the Community and SCIDD were both represented by the United States, the Community also argues, the litigation lacked the adversity necessary for the *Globe Equity Decree* to be acknowledged as an adjudication as between them.

Concerning the question of party identity, the *res judicata* doctrine does not require a complete identity of parties between the first and second actions—only that the party seeking claim preclusion and the precluded party (or their privities) have been involved in both cases. Both the Community and SCIDD were privities of the United States since the federal government represented and asserted their rights in the case. *See* Finding of Fact No. 10, *supra.* Since many water users, such as the Gila Valley Irrigation District and the Franklin Irrigation District, are parties in both cases, they are able to urge *Globe Equity's* preclusive effect. As to other Gila River adjudication claimants who were not parties (or privities) to *Globe Equity*, they may benefit from collateral estoppel or issue preclusion only as to those matters actually litigated in *Globe Equity. See* discussion, *infra* pp. 59-65.

As to the alleged lack of adversity between the interests of the Community and SCIDD, our situation is closely resembles that considered by the Supreme Court in *Orr Ditch.* Distinguishing the proceeding from one involving normal trust law, the Court indicated there that "under the

circumstances . . . the interests of the Tribe and the Project landowners were sufficiently adverse so that both are now bound by the final decree." 463 U.S. at 143. If this were not the outcome in our case, SCIDD (who participated as a partner in the San Carlos Project) would be vulnerable to tribal claims for additional water for both the allotted and surplus lands. The District, an original partner in the San Carlos Project, would be left with some of the poorest water rights in the basin. A leading commentator suggests the absurdity of such a result: "There would be very little to be said for a rule that would make a determination conclusive against a party in litigation with anyone in the world except his co-party." MOORE 2D at ¶ 0.411[2].

[1] *Conclusion of Law No. 9.* The Gila River Indian Community was in privity with the United States, a party to the *Globe Equity* litigation.

[2] *Conclusion of Law No. 10.* The San Carlos Irrigation and Drainage District was in privity with the United States, a party to the *Globe Equity* litigation.

[3] *Conclusion of Law No. 11.* The *Globe Equity Decree* accomplished a thorough and complete specification of the water rights determined in that proceeding, including the relative water rights of the San Carlos Irrigation and Drainage District and the Gila River Indian Reservation to the mainstem of the Gila River. *See* discussion p. 20, *supra.*

[4] *Conclusion of Law No. 12.* Under the holding of *Nevada v. United States*, 463 U.S. 110 (1983), the interests of the Gila River Indian Community and the San Carlos Irrigation and Drainage District were adverse.

d. Changed Circumstances

The Community suggests that "[t]here have been overwhelming changes in the law, the technology, and legal circumstances" since *Globe Equity* that would allow relitigation of the Community's claims in this adjudication. GRIC's Response at *32*. Authorization for the Gila River adjudication, says the Community, is itself an example of such a significant change. The Community also points to changes in legal theories, *e.g.*, whether *Winters* rights may be asserted in behalf of executive order reservations, and recognition of the "practicably irrigable acreage (PIA)" standard by the U.S. Supreme Court. *Arizona v. California*, 373 U.S. 546 (1963).

New facts since the original litigation do not usually create new claims or causes of action. Theories of liability that could have been asserted in the first action are barred in the second action. This includes actions based on different legal theories but having the same factual basis and actions based on different statutes. *See* discussion *supra* pp. 50-54. Changes in law resulting from appellate decisions usually do not create new causes of action. 18 MOORE 3D § 131.21. New or evolving legal theories rarely provide an opportunity to reopen civil cases decided under earlier law. *See generally* IB MOORE 2D ¶ 0.410[1].

Arizona's general stream adjudication is not a substantive basis for establishing new water rights but a procedural mechanism for recognizing existing rights. The Community cannot assert additional water rights in the adjudication any more than a tort victim, who successfully litigated a claim,

can bring a new action based on a doctor's bill omitted from the proof in the first action. Indeed, the Arizona statute compels the recognition, not the reopening, of prior decrees. ARIZ. REV. STAT. ANN. § 45-257(B)(1) (Supp. 1999).

The undisputed facts demonstrate that the United States advanced a complete array of legal theories for water rights for reservation lands, including lands added by presidential executive order. *See* Findings of Fact No. 18-20, 34. The allotted lands had been selected because of their arability. While the practicably irrigable acreage (PIA) standard had not been specifically adopted by the *Globe Equity-era* courts, PIA is only a different evidentiary method, much like using new magnetic resonance imagery (MRI), rather than x-rays, to prove soft-tissue injuries. We do not reopen adjudicated cases because of such advances in evidentiary proof.

[1] *Conclusion of Law No. 13.* The claims asserted by the United States and the Gila River Indian Community in the Gila River adjudication have the same factual and legal basis as the claims asserted by the United States in the *Globe Equity* litigation.

[2] *Conclusion of Law No. 14.* Changes in facts, law, technology, or legal circumstance since the original litigation do not normally justify the assertion of new claims or causes of action in subsequent litigation.

[3] *Conclusion of Law No. 15.* There are no changes in facts, law, technology, or legal circumstance sufficient to overcome the *res judicata* or claim preclusion effect of the *Globe Equity Decree* that would allow the United States or

the Community to assert new water right claims in this adjudication to the Gila River mainstem. An exception would be for any claims for appropriative or reserved water rights for land acquired or withdrawn since the entry of the *GIobe Equity Decree.*

3. Federal Doctrine of Collateral Estoppel

Under the collateral estoppel doctrine, "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Montana v. United States*, 440 U.S. 147, 153 (1978) (citations omitted). Collateral estoppel, also known as issue preclusion, shares the same purpose as the related *res judicata* doctrine, *i.e.*, that once "a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction [it] cannot be disputed in a subsequent suit between the same parties or their privities." MOORE 3D at § 132.01[4][a]. The doctrines differ, however, in important respects.

First, the traditional requirement of mutuality is relaxed, allowing nonparties to the original litigation to benefit from the preclusive effect of an earlier judgment or determination. Preclusion can be urged in either an offensive or defensive manner. A nonparty to the original litigation may assert the earlier determination as an affirmative defense, urging that the issue was determined adversely to the plaintiff in the first case. A nonparty may also assert the original determination as the plaintiff in a new lawsuit, arguing that the defendant's liability or vulnerability on an issue was established in the earlier case.

Second, under collateral estoppel, the preclusive effect of the earlier determination is limited to issues of law or fact that were actually and necessarily decided in the earlier case. As compared to claim preclusion,

> issue preclusion does not prohibit a party from litigating issues that were never argued or decided in the prior proceeding. Inasmuch as the cause of action involved in the second proceeding is not "swallowed by the judgment in the prior suit," the parties are free to litigate points that were not at issue in the first proceeding, even though those points might have been tendered and decided at that time.

18 MOORE 3D at § 132.01 [4] [c].

Third, earlier consent judgments are not given preclusive effect under collateral estoppel. Consent judgments, however, may have preclusive effect if the parties clearly express their intention to that end. *Id.* § 132.03[2][i] & [ii]. *See also Sekaquaptewa v. MacDonald*, 575 F.2d 239 (9th Cir. 1978) (although the Hopi and Navajo tribes had stipulated to boundary line adjustments in earlier litigation, the issue was not actually litigated or necessary to the determinations made in the earlier case).

In the present case, collateral estoppel or issue preclusion is urged by those persons not parties (or privities of parties) to the *Globe Equity* litigation. These persons include those (such as the Salt River Project) who had water rights in the Gila River system when *Globe Equity* was decided but who

had not been joined in that litigation or were dismissed from it, as well as post-*Globe Equity* users of water in the system. *See* categories 3 & 4, *supra* pp. 45-46. The moving parties, however, do not fashion a collateral estoppel argument in favor of these persons. They rather rely on the mutuality exception to the *res judicata* doctrine crafted by the U.S. Supreme Court in *Orr Ditch*. They suggest:

> As the Supreme Court emphasized in Nevada, the *in rem* nature of comprehensive water rights adjudications requires that such proceedings be excepted from the mutuality of parties requirement, usually applicable to prior actions given *res judicata* effect.

GVID's Motion at 28-29 (footnotes omitted). This mutuality exception is addressed in more detail in the next section.

The Gila River Indian Community responds by delineating its reasons why the *Orr Ditch* rationale is inapplicable to the present case. The Community notes that the moving parties did not specifically advance a collateral estoppel argument, saying such an argument would fail because the issues now before the court were not actually litigated or essential to the *Globe Equity* decision. GRIC's Response at 45. In support, the United States adds that *Globe Equity* did not adjudicate "all of the United States' rights to the Gila Decree as against all claimants within the river system and source." United States' Response at 9.

One is required to ascertain whether an issue pending in the present case was "actually and necessarily" litigated in

the earlier proceeding. In *Montana*, *supra*, the U.S. Supreme Court prevented the federal government from renewing a challenge to a state's gross receipts tax, saying that the "precise constitutional claim" had been litigated and lost in the state courts. 440 U.S. at 156. The Court borrowed from an earlier case to state the applicable test "the 'question expressly and definitely presented in this suit is the same as that definitely and actually litigated and adjudged' adversely to the Government in state court." *Id.* at 157 (quoting *United States v. Moser*, 266 U.S. 236, 242 (1924)). To avoid this result, the federal government would have to demonstrate significant changes in important facts or legal principles, or other special circumstances. *Id.* at 157-58.

THE RESTATEMENT (SECOND) OF JUDGMENTS provides guidance in determining whether an issue is the same between an earlier and later case. The treatise suggests the consideration of these factors:

1. Is there is substantial overlap between the evidence or argument?

2. Does the new evidence or argument in the second case involve the same rule of law as in the previous case?

3. Could pretrial preparation and discovery in the earlier case reasonably embrace the issue?

4. How closely related are the daims in both cases.

Appendix E

RESTATEMENT (SECOND) OF JUDGMENTS § 27 cmt. c (1982).

I conclude that the collateral estoppel doctrine actually does resolve some of the questions raised in the moving parties' motion. In our case, the question is whether water rights for the surplus lands was an issue actually and necessarily determined in the *Globe Equity* litigation. While some parties might argue that additional water rights or uses for allotted lands were issues not decided in *Globe Equity*, I believe that there is no question that the full array water rights for the allotted lands was an issue "actually and necessarily" determined in those proceedings. *See* Finding of Fact No. 18 & Conclusion of Law No. 7, *supra.*

As to the surplus lands, however, the RESTATEMENT guidelines fail to suggest a definitive result which is a sufficient reason in itself to avoid a finding of collateral estoppel as to these lands. The facts are uncertain as to whether water rights were "actually and necessarily" adjudicated in *Globe Equity* for the surplus lands. In some respects, the issue appears identical between both proceedings: the legal basis for both allotted and surplus lands was the same (*i.e.*, appropriative rights and the federal reserved rights doctrines). The arability and other characteristics of this land could have been addressed in discovery, to the extent discovery was practiced in the 1920s and 1930s. The evidence for the surplus lands, however, would have needed to be customized for those lands. All told, the question is a close call.

Appendix E

A separate and sufficient reason exists for denying collateral effect to *Globe Equity* proceedings as to the surplus lands. As discussed above, consent decrees like *Globe Equity* are not entitled to such preclusive effect unless the parties so intend. While I believe there is no question that the *Globe Equity* parties had this intent as to the allotted lands, *see* Finding of Fact No. 34, the facts are unsettled as to whether the parties also intended that the decree have such issue preclusion effect as to the surplus lands. *See* Finding of Fact No. 21. On this motion for summary judgment, therefore, I find that nonparties cannot assert the preclusive effect of the *Decree* under the collateral estoppel doctrine as to surplus lands.

There is credible evidence that the *Globe Equity* court did not specifically consider, and did not adjudicate, water rights for the surplus lands on the apparent assumption that these lands would be watered, if at all, from some other sources. The *Globe Equity Decree* determined water rights for the allotted lands; it apparently did not do so for the surplus lands.

a. *Conclusion of Law No. 16.* The water rights of the Indian Community and its members to allotted lands were actually and necessarily litigated and determined in the *Globe Equity* proceedings.

b. *Conclusion of Law No. 17.* Consent decrees, such as the *Globe Equity Decree*, do not have collateral estoppel or issue preclusion effect unless the parties specifically intend such effect.

c. *Conclusion of Law No. 18.* The water right determinations for the allotted lands have collateral estoppel or issue preclusion effect since there is no genuine dispute that the parties to the *Globe Equity Decree* intended such preclusive effect. Nonparties[10] to the decree may assert the preclusive effect of the decree as to these allotted lands.

d. *Conclusion of Law No. 19.* The material facts are in dispute as to whether water rights for the surplus lands was an issue actually and necessarily determined in the *Globe Equity* proceedings. Indeed, much of the evidence runs contrary, *i.e.*, supporting the conclusion that other sources of water would have to be acquired for these lands.

e. *Conclusion of Law No. 20.* There has been no credible showing here that the *Globe Equity* parties specifically intended the decree to have preclusive effect on the issue of water rights for the surplus lands.

f. *Conclusion of Law No. 21.* Material facts are genuinely in dispute as to whether the issue of water rights for surplus lands was actually and necessarily determined in *Globe Equity.* Summary judgment on the question of the preclusive effect of the *Globe Equity Decree* as to surplus lands, therefore, is unavailable.

g. *Conclusion of Law No. 22.*, Because it is uncertain whether *Globe Equity* actually determined federal reserved

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10. In these conclusions of law, "nonparty" means a person who was not a party to the *Globe Equity Decree*, a successor of such a party, or a person in privity with such a party. *See* pp. 48, *supra*, for a discussion of the meaning of "privity."

rights or appropriative rights for surplus lands, nonparties to the decree may not assert collateral estoppel against the Community on that issue. Unless an evidentiary hearing establishes that *Winters* or other water rights to surplus lands were actually determined in *Globe Equity*, the Community and United States are free to pursue water rights for these surplus lands in this adjudication. Such rights, if established, would be enforceable only against those persons who were not parties, successors, or privities to the *Globe Equity Decree.*

4. *Orr Ditch* Exception to *Res Judicata's* Mutuality Requirement

As previously reviewed, the Supreme Court in *Orr Ditch* created an exception to the traditional mutuality requirement for the *res judicata* doctrine. *See* discussion, *supra* pp. 22-23. The Court reasoned why subsequent Truckee River water users, who were not parties to the *Orr Ditch* litigation, could hold the Tribe to the water rights adjudicated in the earlier proceeding. Not relying on a collateral estoppel argument to reach this result, the Court seems to recognize that (a) the tribal fishery claim *could* have been litigated in *Orr Ditch* (thus justifying claim preclusion) and (b) the fishery claim *was not* actually and necessarily litigated (required for issue preclusion in the subsequent case).

Since I am unable to conclude that the Gila River Indian Community's present claim to water for the surplus lands was an issue previously decided in *Globe Equity*, I must address the *Orr Ditch* exception to the mutuality requirement for *res judicata.* The argument which is strongly and

repeatedly urged by the moving parties is that, like *Orr Ditch*, nonparties throughout the Gila River system have detrimentally relied on the *Globe Equity Decree* as the final statement of all water rights for the reservation.

Every sophisticated water user in the Gila River system is aware of *Globe Equity's* existence if not its precise meaning. However, when Justice Rehnquist concluded that "[n]onparties such as the subsequent appropriators in these cases have relied just as much on the *Orr Ditch Decree* in participating in the development of western Nevada as have the parties of that case," 463 U.S. at 144, he was doing so based on a factual record demonstrating that reliance. Indeed, the trial judge had found

> That the defendants in *Orr Ditch* and their successors in interest in this case, as well as other persons, firms, corporations, entities, governmental units, agriculture, business, industry, and labor have detrimentally relied upon the terms and conditions and the final and conclusive nature of the *Orr Ditch* final decree.

Finding of Fact No. 27, set forth in App. F to Petition for Writ of Certiorari filed by State of Nevada, *Nevada v. United States*, No. 81-2245 (June 7, 1982). This determination had been reached after evidentiary hearings extending over many months on the *res judicata* defense.

In our case, there is no uncontroverted showing of detrimental reliance by nonparties on the *Globe Equity Decree*. While there are examples of such reliance, they are

not so commonly and undisputedly known as to allow judicial notice to be taken of such reliance. It would be improvident to grant the motion for summary judgment on this affirmative defense without an evidentiary hearing.

a. *Conclusion of Law No. 23.* Since material facts are in dispute whether many nonparties relied to their detriment on the *Globe Equity Decree's* determination of water rights for the Gila River Indian Community, nonparties cannot invoke the *Orr Ditch* exception to the mutuality requirement of the *res judicata* doctrine. Nonparties, therefore, cannot assert that water right claims in this adjudication for surplus lands are precluded by *res judicata*, and the United States and the Community may continue to assert water rights for these lands. Nonparties can assert, however, that additional water right claims for allotted lands are barred under the collateral estoppel or issue preclusion doctrine, as previously recognized in Conclusion of Law No. 18, *supra.*

5. Responses to Other of the Community's Arguments

The Community identifies many instances of what they believe are unsettled, ambiguous, or disputed material facts. Because of these uncertain facts, the Community concludes that summary judgment cannot be granted. I address most of the instances identified by the Community. In all cases, I conclude that there is no genuine dispute concerning a fact material to the motion for summary judgment or, if a factual uncertainty exists, is immaterial to the present inquiry.

Appendix E

a. *Conclusion of Law No. 24. Is the Globe Equity Decree Ambiguous?* The Community argues that the *Globe Equity Decree* is ambiguous and its interpretation requires the consideration of extrinsic evidence, an impermissible inquiry on a motion for summary judgment. Even if the decree is itself ambiguous, this ambiguity does not concern a material fact that would prevent summary judgment. The motion here does not seek an interpretation of a decree or contract. Rather, the motion asks for a determination of the *Globe Equity Decree's* preclusive effect. To decide this motion and interpret what was decided in the earlier litigation, the court is entitled to compare the records in both proceedings. Evidence beyond the decree itself can be used so long as its satisfies the requirements of Rule 56(c), ARIZ. R. CIV. P. The court can examine the amended complaint and other pleadings, as did the federal courts considering the *Orr Ditch Decree. See, e.g.*, 463 U.S. at 132 ("we return to the amended complaint, where it is alleged. . . .").

b. *Conclusion of Law No. 25. Did Globe Equity adjudicate the entire Gila River system?* This issue has been addressed in the foregoing discussion. *See* discussion, pp. 52-53, *supra.* The Community's claims or causes of action were the same in both proceedings. *Globe Equity* did not adjudicate the entire Gila River, but that fact is inconsequential.

c. *Conclusion of Law No. 26. Did Globe Equity adjudicate reservation lands outside the boundaries of the San Carlos Project?* For *res judicata* purposes, the question is immaterial since the United States had the obligation to place all of its claims at issue. The question does have

significance for collateral estoppel purposes, which has been previously discussed. *See* discussion, pp. 59-65, *supra.*

d. *Conclusion of Law No. 27. Did Globe Equity adjudicate all lands owned by non-Indian parties?* The pending motion is addressed to the water right claims of the Gila River Indian Community. The question is immaterial to that motion. The possible preclusive effect of the *Globe Equity Decree* on other parties to the adjudication is an issue raised by other motions before the court. To the extent this question relates to the comparability of *Globe Equity* and this adjudication, it is an issue discussed elsewhere. *See* discussion, pp. 50-54, *supra.*

e. *Conclusion of Law No. 28. Did Globe Equity adjudicate the water rights appurtenant to all lands within four counties, all lands within Arizona, or all lands within New Mexico?* While the Community's argument here is unclear, it is apparently a variation of the Community's principal argument about the differences between *Globe Equity* and the present adjudication. That argument is addressed elsewhere, *see* discussion pp. 50-54, *supra*, leading to the conclusion that the geographic scope of the cases is immaterial since the same claim or cause of action was asserted by or for the Community in both cases.

f. *Conclusion of Law No. 29. Did Globe Equity adjudicate federal reserved water (Winters) rights for allotment lands?* I have determined that the United States asserted in *Globe Equity* a full array of legal theories, including the reserved rights doctrine for allotted lands. This finding is beyond genuine controversy. *See* Findings of Fact

Nos. 18-20. Even assuming there was factual uncertainty as to whether the United States asserted reserved rights for allotment lands, the factual uncertainty would have no legal significance. The *Winters* doctrine was announced decades before the *Globe Equity* litigation and was well-known to the federal attorneys involved in the case. *Winters* constituted only a different legal theory that *could* and *should* have been asserted in *Globe Equity*, even if it was not.

g. *Conclusion of Law No. 30. Did Globe Equity adjudicate federal reserved (Winters) rights for the entire reservation, including the surplus lands that ultimately remained part of the reservation?* For *res judicata* or claim preclusion purposes, the factual uncertainty does not have legal significance. The *Winters* doctrine was announced decades before the decree and was well-known to the federal attorneys involved in the case. The Indian Reorganization Act, which ended the allotment and surplus land disposal program, was enacted a year before the decree. The United States was obligated to assert all claims arising from the same transaction or series of transactions, here the original and all subsequent land withdrawals for the reservation. If the United States failed to assert these claims, the Indian Community and United States are barred under the claim preclusion doctrine. *See* discussion pp. 47-59, *supra.*

I do agree with the Community that it is factually uncertain whether *Globe Equity* constituted a specific adjudication of federal reserved rights *(Winters* rights) for the surplus lands that were originally intended to be sold or transferred to non-Indians. *See* Conclusion of Law No. 19. Thus, the question has significance under the collateral

estoppel doctrine, as previously discussed. *See* discussion pp. 53-59, *supra.*

h. *Conclusion of Law No. 31. Were water users on the Gila River's tributaries also parties to Globe Equity?* Unless they also had rights on the Gila River mainstem, water users on the Gila River's tributaries were not joined as defendants in the *Globe Equity* litigation or were dismissed from the case without prejudice. Although they were not parties, these tributary users can use the *Orr Ditch* exception to the *res judicata* mutuality requirement, as well as the collateral estoppel doctrine, to hold the Community to the *Globe Equity* award of water for allotment lands. *See* discussion pp. 59-65, *supra.*

i. *Conclusion of Law No. 32. Was Globe Equity a sufficiently comprehensive adjudication so as to provide a legal basis for detrimental reliance by others, including water users on tributaries and subsequent users?* This question has been discussed in the context of whether the United States' and the Community's claims are the same in *Globe Equity* and this proceeding. Both cases involve a significant geographic scope. In both cases, the federal and tribal claims have the same factual and legal basis. *See* discussion pp. 50-54, *supra.*

F. Recommendation

The motion of the Gila Valley Irrigation District *et al.* should be GRANTED IN PART and DENIED IN PART. The original parties to the *Globe Equity Decree*, their successors, and their privities (categories 1 and 2 of persons, including

the San Carlos Irrigation and Drainage District; *see* pp. 45-46, *supra)* can successfully use the affirmative defense of *res judicata* or claim preclusion to bar the United States and the Gila River Indian Community from asserting any additional water rights for the Gila River Indian Reservation (including the allotted and surplus portions). These persons are entitled to maintain that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that Community, and the United States on their behalf to water for all purposes appurtenant to the Gila River Indian Reservation.

Nonparties to the *Globe Equity Decree* (categories 3 and 4 of persons) can successfully invoke both collateral estoppel (issue preclusion) and the *Orr Ditch res judicata* mutuality exception as affirmative defenses to prevent the United States and the Gila River Indian Community from asserting any additional water rights or uses appurtenant to the allotted land portion of the reservation. For this allotted portion of the reservation, nonparties are entitled to maintain that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that Community, and the United States on their behalf to water for all purposes appurtenant to the allotted portion of the reservation.[11]

As against nonparties to the *Globe Equity Decree*, the United States and the Gila River Indian Community may

11. This report does not preclude the United States or the Community, by invoking the appropriate legal procedures, from seeking changes of use in the water rights already adjudicated or acquired for the reservation.

continue to assert additional water right claims for the surplus land portion of the reservation. These nonparties, however, may attempt to prove the basis for the *Orr Ditch res judicata* mutuality exception during trial on the merits of the federal and tribal claims or during a specifically scheduled evidentiary hearing on the question. A summary of these determinations is set forth in Table 2.

Nonparties to the *Globe Equity Decree* (categories 3 and 4 of persons) can successfully invoke both collateral estoppel (issue preclusion) and the *Orr Ditch res judicata* mutuality exception as affirmative defenses to prevent the United States and the Gila River Indian Community from asserting any additional water rights or uses appurtenant to the allotted land portion of the reservation. For this allotted portion of the reservation, nonparties are entitled to maintain that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that Community, and the United States on their behalf to water for all purposes appurtenant to the allotted portion of the reservation.[11]

As against nonparties to the *Globe Equity Decree*, the United States and the Gila River Indian Community may continue to assert additional water right claims for the surplus land portion of the reservation. These nonparties, however, may attempt to prove the basis for the *Orr Ditch res judicata* mutuality exception during trial on the merits of the federal and tribal claims or during a specifically scheduled evidentiary hearing on the question. A summary of these determinations is set forth in Table 2.

Table 2: Preclusive Effect of *Globe Equity No. 59 Decree*

Can GRIC/US assert as against these parties:	Additional water rights for allotment lands?	Additional water rights for surplus lands?
Original parties to *Globe Equity*	No, barred by *res judicata* (claim preclusion)	No, barred by *res judicata* (claim preclusion)
Successors to or privities of *Globe Equity* parties	No, barred by *res judicata* (claim preclusion)	No, barred by *res judicata* (claim preclusion)
Water users who were not joined in *Globe Equity* or dismissed from it (*e.g.*, certain NM users, tributary users, downstream users	No, barred by collateral estoppel (defensive issue preclusion as to issue "actually litigated") & by *Orr Ditch* mutuality exception to *res judicata* doctrine	Yes, consent judgment not entitled to collateral estoppel effect; genuine issue about whether issue was "actually litigated"
Water users subsequent to *Globe Equity*	No, barred by collateral estoppel (defensive issue preclusion as to issue "actually litigated") & by *Orr Ditch* mutuality exception to *res judicata* doctrine	Yes, consent judgment not entitled to collateral estoppel effect; genuine issue about whether issues was "actually litigated"

Appendix E

IV. CLAIMS TO THE SAN CARLOS RIVER

Motion for Summary Judgment filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (Mar. 1, 1999), asserting that any water right claims of the Gila River Indian Community, or on its behalf, to the San Carlos River are precluded by the *Globe Equity Decree* and other documents (Docket No. 118).

A. *Introduction*

The 1924 Landowners' Agreement between the United States and the landowners to be included in the San Carlos Project included an itemization of the water rights being pledged to the project by the signatories to the agreement. These sources of water included (a) the water rights of the earlier Florence-Casa Grande Project; (b) water rights (except well water rights) appurtenant to other private land being brought into the new project; (c) water rights acquired by the United States for the project; and (d) certain Indian water rights in the Gila River above the inflow of the Salt River. OSM No. 153, at 7.

This last category of pledged water rights is the subject of the motion for summary judgment filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation. The category of water rights is more specifically described in the Landowners' Agreement as "so much of the water rights from the Gila River above the confluence therewith of the Salt River now owned by the United States or said Indians for or on account of or appurtenant to said

Gila River Indian Reservation and the San Carlos Indian Reservation. . . ." *Id.*

The United States may not have pledged all of this Indian water to the San Carlos Project. The language of the Landowners' Agreement continues by qualifying the earlier language, saying "except water rights in that tributary of the Gila River known as the San Carlos River, and except water rights of the United States or of the Indians in the Gila River, which shall be retained by the Secretary of the Interior for the use of the Indians of the said San Carlos Reservation. . . ." *Id.* at 7-8. So, from that larger group of water rights benefiting the Gila River Indian Reservation and the San Carlos Indian Reservation, the San Carlos Apache Tribe argues that water rights benefiting the San Carlos Indian Reservation were withdrawn from the pledge of federally held water rights to the San Carlos Project.

The San Carlos Apache Tribe also uses this language as the basis for its argument that the United States, for itself and in behalf of the Gila River Indian Community and the San Carlos Irrigation and Drainage District, waived any water right claims it might assert to the San Carlos River. They indicate that this waiver has been incorporated into the *Globe Equity Decree*; however, the language referred to by the San Carlos Apache Tribe in its pleading does not directly support this contention. *See* San Carlos Apache Tribe's Motion at 3.

The Gila River Indian Community responds, repeating earlier arguments that the *Globe Equity Decree* is ambiguous; the Community and the San Carlos Apache Tribe were co-parties, not adversaries, in the *Globe Equity* litigation; and

the causes of action are different between the two cases. The United States takes no position on the issue.

I believe the language of the Landowners' Agreement only means that the United States had control over several "pots" of water that it could pledge to the San Carlos Project, *e.g.*, Gila River Indian water rights, San Carlos Indian water rights, and other water rights acquired for the reclamation project. The federal government pledged most of these "pots" of water to the project; but, under the exclusion language discussed, it apparently did not pledge water rights that the San Carlos Apache Tribe might establish in the San Carlos River. What rights the San Carlos Apache Tribe may have in the San Carlos River is beyond the scope of this proceeding concerned, as it is, with the water rights of the Gila River Indian Community.

Rather than resolve the exact implications of the Landowner's Agreement on any Gila River Indian Community's claims to the San Carlos River, I believe the Apache Tribes' motion should be granted for a different but stronger reason. I have already determined that *res judicata* binds the parties and privities to *Globe Equity*, not only as to what was determined by decree in 1935 but also what could have been litigated in that proceeding. *See* discussion pp. 47-59, *supra.* The United States, as a party to *Globe Equity*, and the Gila River Indian Community, as a privity of the United States, can establish no additional rights to the Gila River system against other parties and privities to the *Globe Equity* litigation, including the San Carlos Apache Tribe, beyond those rights set forth in that decree. While they were both represented by the United States in the *Globe Equity*

litigation, there was no lack of adversity between the Gila River Indian Community and the San Carlos Apache Tribe under the U.S. Supreme Court's holding in *Nevada v. United States*, which has been previously discussed. *See* discussion pp. 20-24, *supra.*

B. *Findings of Fact*

1. *Finding of Fact No. 35.* Both the Gila River Indian Community and the San Carlos Apache Tribe are privities of the United States, which represented their interests in the *Globe Equity* litigation.

C. *Conclusions of Law*

1. *Conclusion of Law No. 33.* While they were both represented by the United States in the *Globe Equity* litigation, there was no lack of adversity between the Gila River Indian Community and the San Carlos Apache Tribe under the U.S. Supreme Court's holding in *Nevada v. United States*, 463 U.S. 110, 126 (1983) ("'it matters but little who are plaintiffs and who are defendants in the settlement of cases of this character'").

2. *Conclusion of Law No. 34.* The San Carlos Apache Tribe is entitled to assert that Gila River Indian Community can establish no additional rights to the Gila River system against the San Carlos Apache Tribe beyond those rights set forth in the *Globe Equity Decree.*

D. *Recommendation*

The motion of the San Carlos Apache Tribe *et al.* should be GRANTED since the these Apache Tribes are privity to an original party to the *Globe Equity Decree*, *i.e.*, the United States, and the interests of the Gila River Indian Community and these Apache Tribes were sufficiently adverse in that litigation.

The San Carlos Apache Tribe is entitled to assert that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that Community, and the United States on their behalf, to water (including the water of the San Carlos River) for all purposes appurtenant to the Gila River Indian Reservation (including the lands described as "allotted" and "surplus" in this report).

V. EFFECT OF LANDOWNER AND REPAYMENT AGREEMENTS

> Motion for Summary Judgment filed by the San Carlos Irrigation and Drainage District (Oct. 4, 1999), asserting that the water right claims of the Gila River Indian Community, or on its behalf, are conditioned on certain agreements commonly known as the Florence-Casa Grande Landowners' Agreement, San Carlos Irrigation Project Landowners' Agreement, and the Project Repayment Contract (Docket No. 206).

Appendix E

A. *Introduction*

Because of political and engineering necessities during the early decades of the 20th Century, the San Carlos Project was constructed with common features to serve both Indian and non-Indian agriculture. The joint approach broadened public support for the project and included features that could serve both communities.

One of the first components of the San Carlos Project was the Florence-Casa Grande Project, authorized by Congress in 1916. The legislation called for the construction of two diversion dams on the Gila River and distribution facilities that would later be merged into the larger San Carlos Project. To make the project feasible, the legislation authorized the Secretary of the Interior to enter into contracts with non-Indian farmers whereby these landowners pledged their water rights to the federal government, promised to repay certain of the costs, and suffered liens on their property to secure the debt. In exchange, the Secretary promised to make water rights appurtenant to the Gila River Indian Reservation available to the project, pool the Indian and non-Indian water, and distribute the water according to a percentage formula. The agreements embodying this arrangement are known as the Florence-Casa Grande Project Act Landowners' Agreements. OSM No. 213.

After Congress authorized the construction of Coolidge Dam and San Carlos Reservoir in 1924, 38,000 additional acres were brought into the reclamation project. Once again, the Secretary was authorized to obtain landowners' agreements reciting water distribution and repayment

provisions similar to the earlier Florence-Casa Grande agreements. This second set of agreements is known collectively as the San Carlos Irrigation Project Landowners' Agreements. OSM No. 153.

In 1931, the United States and the San Carlos Irrigation and Drainage District entered into a Repayment Contract whereby the District agreed to repay the costs of the project works including Coolidge Dam, Ashurst-Hayden Dam, and water distribution canals and contribute money toward the ongoing operational and maintenance costs of the system. OSM No. 458 at 6-8, 10-13. This agreement also referred to the common water supply of the project. *Id.* at 4.

The *Globe Equity Decree* makes several references to the Florence-Casa Grande Project Act Landowners' Agreement and appears to incorporate the pooling provisions of that agreement. *E.g.*, art. VII, OSM No. 4.

The San Carlos Irrigation and Drainage District has filed a motion for summary judgment asserting that the Florence-Casa Grande Landowners' Agreement, the San Carlos Irrigation Project Landowners' Agreement, the Repayment Contract, and the *Globe Equity Decree* all recognize and require the pooling arrangement. Thus, it is alleged, "any water rights decreed to GRIC in this Adjudication for any lands within [the San Carlos Project] must be pooled with SCIDD water rights as part of a common Project water supply for use on [San Carlos Project] lands." SCIDD's Motion for Summary Judgment at 2.

Appendix E

The Gila River Indian Community opposes SCIDD's motion because it believes the question of a pooling arrangement is properly and exclusively before the federal district court as part of the interpretation and enforcement of the *Globe Equity Decree.* The Community further argues that the motion does not satisfy the criteria necessary for summary judgment. The United States agrees (joined by Gila Valley Irrigation District and Franklin Irrigation District on this point) that the question is properly before federal court. Further, the federal government argues, the adjudication court has no subject matter jurisdiction to interpret any contractual obligations concerning a pooling arrangement.

B. *Findings of Fact*

1. *Finding of Fact No. 36.* The federal district court recently considered a similar motion filed by the San Carlos Irrigation and Drainage District. On February 9, 2000, Judge John C. Coughenour upheld the water pooling provisions of the *Globe Equity Decree*, which incorporate the earlier provisions of the Florence-Casa Grande Landowners' Agreements and the San Carlos Irrigation Project Landowners' Agreements.

2. *Finding of Fact No. 37.* In its memorandum decision, the federal court said:

> SCIDD has identified several places in the Decree, including Articles V, VI, and VII, where this formula [providing an approximate division of 60 percent of the water to the Indian Community and 40 percent to the non-Indian farmers of SCIDD]

> is either explained or explicitly referenced. No party presently challenges that this formula has been incorporated as a provision enforceable under the Decree. Accordingly, the Court finds that water called for by these parties should be allocated according to the formula as described in Article VI(3) of the Decree.

Order at 3, *United States v. Gila Valley Irr. Dist.*, Globe Equity No. 59 (D. Ariz. Feb. 9, 2000).

C. *Conclusions of Law*

1. *Conclusion of Law No. 35.* The ruling made by Judge John C. Coughenour on the motion filed by the San Carlos Irrigation and Drainage District in federal court decides the issue presented by SCIDD in this proceeding and moots SCIDD's motion for summary judgment. Since the question presented involves an interpretation of the *Globe Equity Decree*, the question has been properly addressed and answered by the federal court.

2. *Conclusion of Law No. 36.* Once decreed, the abstracts for water rights subject to these water pooling conditions should contain annotations in the "Other Remarks" field to the applicable provisions of the *Globe Equity Decree* and other agreements. This will further the court's interest in making a public record of contractual arrangements or other decrees that affect the use of the public waters of Arizona. The annotations should be confined to comments to this effect. "The water rights adjudicated in this Abstract may be subject to certain water pooling

requirements set forth in the Florence-Casa Grande Landowners' Agreement (1919), San Carlos Irrigation Project Landowners' Agreement (various dates), San Carlos Project Repayment Contract (1931), and *Globe Equity Decree* (1935)."

3. *Conclusion of Law No. 37.* Left unanswered, however, is the question of whether the water pooling agreements apply to additional sources of water potentially adjudicated to project lands in this adjudication. For instance, if the Gila River Indian Community were able to establish additional or improved water rights for its reservation lands within project boundaries (overcoming my earlier determinations of GVID's motion for summary judgment), would this additional water be subject to the water pooling agreements? Once again, this is in the first instance a matter of interpretation and enforcement to be addressed by the federal district court. The question should not be addressed or decided by the adjudication court.

D. *Recommendation*

The motion for summary judgment filed by the San Carlos Irrigation and Drainage District on the question of pooling arrangements should be DENIED as moot as the issue has been decided in SCIDD's favor by the federal district court in its enforcement and administration of the *Globe Equity Decree.*

Once decreed, the abstracts for water rights subject to these water pooling conditions should contain annotations in the "Other Remarks" field to the applicable provisions of the *Globe Equity Decree* and other agreements.

Appendix E

VI. EFFECT OF WATER RIGHTS SETTLEMENT AND EXCHANGE AGREEMENT

Motion for Summary Judgment filed by ASARCO Incorporated (Oct. 4, 1999), asserting that the water right claims of the Gila River Indian Community, or on its behalf, are conditioned by the Water Rights Settlement and Exchange Agreement (Jan. 1, 1977) and the Consent to Assignment [of the Water Rights Settlement and Exchange Agreement] (April 25, 1993) (Docket No. 202).

A. *Introduction*

Kennecott Copper Corporation held surface water rights in the upper basin of the Gila River system. The water was used in Kennecott's mining and milling operations at Ray and Hayden, Arizona, as well as for some farming along the Gila River. Some of the company's rights were incorporated into the *Globe Equity Decree*, but Kennecott and the Gila River Indian Community apparently disagreed over the nature and extent of their respective water rights.

Kennecott and the Community entered into a Water Rights Settlement and Exchange Agreement in January 1977 to resolve some of these disagreements. OSM No. 158. Under the main features of the agreement, Kennecott was allowed to continue to use its water rights under *Globe Equity*. Kennecott promised to pay $1.5 million in satisfaction of the Community's claims for damages resulting from Kennecott's past use of water in the Gila River system.

Appendix E

Kennecott could use Gila River system water in excess of its *Globe Equity* rights if it paid liquidated damages to the Community or provided replacement Central Arizona Project water. Thus, the agreement had both forbearance and exchange provisions. The agreement was signed by Kennecott, the Indian Community, and the Secretary and other officials of the Department of Interior. The agreement apparently was not reviewed or approved by any court or other governmental entity.

Kennecott's land and water rights in the Gila River basin were acquired by ASARCO in 1986. On April 25, 1993, the Indian Community signed a Consent to Assignment of the Water Rights Settlement and Exchange Agreement to ASARCO. OSM No. 162. This consent was not signed by Interior Department officials.

ASARCO now seeks a summary determination that the Gila River Indian Community's water rights are conditioned by its obligations to ASARCO under the 1977 Water Rights Settlement Agreement and Exchange Agreement and the 1993 assignment.

The Indian Community opposes the summary judgment request, arguing that it has not waived its sovereign immunity for the interpretation of its contracts, the agreement contains a specific choice of forum provision, and the matter should be addressed in the first instance by the *Globe Equity* court.

Other parties have weighed in against ASARCO's motion for other reasons. The Salt River Project and Tempe suggest that the agreement structures an off-reservation lease of

Indian water which is impermissible without congressional approval and the Consent to Assignment has never been approved by the Department of Interior. The San Carlos Irrigation and Drainage District agrees with these contentions and adds that any federal approval of the agreement could not bind SCIDD. The United States maintains that it was not a party to the 1977 agreement and, therefore, cannot be bound by its terms. The San Carlos Apache Tribe joins in many of these arguments.

ASARCO and the Indian Community both suggest that the agreement has worked well between them although there appears to be some dispute as to whether ASARCO has satisfied its obligations to provide "make-up" CAP water. While problems lurk in the shadows, such as whether the federal government ever approved the agreement, they probably would not threaten the parties' working relationship under the agreement if the matter had not been illuminated by the general stream adjudication's sometimes harsh light.

B. ***Findings of Fact***

1. *Finding of Fact No. 38.* Kennecott Copper Corporation and the Gila River Indian Community entered into a Water Rights Settlement and Exchange Agreement on January 1, 1977, to resolve certain disagreements. The agreement was signed by Kennecott, the Indian Community, and the Secretary and other officials of the Department of Interior. [OSM No. 158].

2. *Finding of Fact No. 39.* Kennecott's land and water rights in the Gila River basin were acquired by

ASARCO in 1986. On April 25, 1993, the Indian Community signed a Consent to Assignment of the Water Rights Settlement and Exchange Agreement to ASARCO. This consent was not signed by Interior Department officials. [OSM No. 162].

3. *Finding of Fact No. 40.* Paragraph 35 of the Water Rights Settlement and Exchange Agreement requires the Indian Community and ASARCO to submit "all actions for the enforcement or interpretation" of the agreement to federal court. The parties waive any immunity they might have to federal court litigation and each relinquishes any right "to have any dispute arising hereunder determined in any state court, tribal court or under tribal law or custom, and covenants that it will not in any manner seek to have this Agreement or its rights or obligations hereunder enforced or adjudicated in any state court, tribal court, or under tribal law." [OSM No. 158, at 30]. In the event a federal court does not agree to hear the dispute, the contracting parties agreed to have the dispute arbitrated.

C. *Conclusions of Law*

ASARCO properly brought its motion for summary judgment after being directed by superior court to identify prior decrees, agreements, or documents that may affect the water rights of the Gila River Indian Community. The identification of the Water Rights Settlement and Exchange Agreement and the Consent to Assignment helps describe the complex weave that is the law of Gila River. While the adjudication court has a strong interest in identifying and publicizing these documents, it has little interest in

gratuitously resolving every conceivable legal problem that may accompany these prior legal arrangements. While the adjudication court is obliged to determine the respective water rights of the Indian Community, United States, ASARCO, and others, it does not need to interpret contracts about the leasing or use of the water under these rights, or the validity of the agreements themselves, until an actual dispute is properly before the court.

The choice of forum provision of the agreement provides the proper basis for deciding ASARCO's motion. Other than to say they are substantial issues, I need not discuss at length the tribal sovereign immunity questions raised by asking the adjudication court to interpret contracts between water users. A similar issue was raised in the Little Colorado River Adjudication, *i.e.*, whether the adjudication court had jurisdiction to interpret provisions of the Navajo Nation Water Code. Among other reasons, I ruled that by filing claims in the adjudication, the Navajo Nation did not waive its immunity to allow a state court to interpret its water code. Report of the Special Master at 19-21, *In re Atkinson's Ltd. of Az. Dba Cameron Trading Post*, No. 6417-34-1 (Little Colorado River Adjudication Sept. 15, 1999); *see also McClendon v. United States*, 885 F.2d 627 (9th Cir. 1989) (tribal action concerning ownership of land is not waiver of immunity for interpretation of lease).

1. *Conclusion of Law No. 38.* The choice of forum provision contained in paragraph 35 of the Water Rights Settlement and Exchange Agreement is dispositive of ASARCO's motion. The paragraph requires the Indian Community and ASARCO to submit "all actions for the

enforcement or interpretation" of the agreement to federal court. The parties waive both any immunity they might have to federal court litigation and each relinquishes any right "to have any dispute arising hereunder determined in any state court, tribal court or under tribal law or custom, and covenants that it will not in any manner seek to have this Agreement or its rights or obligations hereunder enforced or adjudicated in any state court, tribal court, or under tribal law." [OSM No. 158, at 30]. If the federal courts do not agree to hear the dispute, the contracting parties agree to have the dispute arbitrated. The adjudication court should honor this choice of forum provision.

2. *Conclusion of Law No. 39.* To further the interest of the adjudication court in preparing a public record of agreements or arrangements that may affect the use and management of the public waters of the State of Arizona, the appropriate water right abstracts of the Gila River Indian Community and ASARCO, once they are prepared, should be annotated in the "Other Remarks" section with a reference to the Water Right's Settlement and Exchange Agreement and Consent to Assignment. The annotations should be limited to comments of this effect: "The water rights adjudicated in this Abstract may be subject to the Water Rights Settlement and Exchange Agreement between the Gila River Indian Community and Kennecott Copper Corporation, dated January 1, 1977, and the Consent to Assignment [to ASARCO], dated April 25, 1993."

D. *Recommendation*

The motion should be DENIED for the reason that the question presented should be decided by a federal court or an arbitrator selected under the choice of forum provisions contained in the Water Rights Settlement and Exchange Agreement.

The appropriate water right abstracts of the Gila River Indian Community and ASARCO, once they are prepared, should be annotated in the "Other Remarks" section with a reference to the Water Rights Settlement and Exchange Agreement and Consent to Assignment, using language substantially similar to that set forth in Conclusion of Law No. 39.

VII. MOTION FOR APPROVAL OF MASTER'S REPORT AND FOR ENTRY OF PROPOSED ORDER

Based on Findings of Fact, Conclusions of Law, and other discussion set forth in this report, the Special Master recommends the disposition of the pending motions as specifically set forth in the preceding discussion. The Master additionally recommends that these determinations be reflected in subsequent hydrographic survey reports prepared by the Arizona Department of Water Resources.

The Master hereby submits a proposed order effectuating these recommendations. The proposed order appears as Appendix B to this report.

Appendix E

The Special Master hereby MOVES the Superior Court, under the provisions of Rule 53(h), ARIZONA RULES OF CIVIL PROCEDURE, to adopt his report and enter the proposed order after the appropriate notice has been given.

VIII. NOTICE OF SUBSEQUENT PROCEEDINGS

This report has been filed with the Clerk of the Court and posted to the Special Master's website (http://www.supreme.state.az.us/wm/) on June 30, 2000. Printed copies will be mailed on July 5, 2000.

NOTICE IS HEREBY GIVEN that any claimants in the Gila River adjudication may file an objection to the report on or before **Wednesday, July 26, 2000**.[12] Any responses to objections must be filed with the Clerk of the Court on or before **Wednesday, August 9, 2000**. Objections and responses must be filed with the Clerk of the Superior Court, Maricopa County, 101/201 W. Jefferson St., Phoenix, AZ 85003-2205, Attn: Water Case W1-203. Copies of objections and responses must be served personally or by mail on all persons appearing on the service list for this contested case attached as Appendix C to this report.

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12 The period for filing objections to the report includes the ten-day period, not including intermediate Saturdays, Sundays, and legal holidays, as specified by Rules 6(a) and 53(h), ARIZ. R. CIV. P. The five-day period for filing responses is specified in Rule 4(a), UNIFORM RULES OF PRACTICE. An additional five-day period is required when service has been made by mail (Rule 6(e), ARIZ. R. CIV. P.). Since the report does not cover an entire subwatershed or reservation, but only motions concerning an aspect of the case, the 180-day period prescribed by ARIZ. REV. STAT. ANN. § 45-257(A)(2) (Supp. 1998) does not apply.

Appendix E

NOTICE IS ALSO GIVEN that the hearing on the Master's motion to approve the report, and any objection to the report, will be taken up at the next scheduled conference or hearing before Judge Bolton held after August 9, 2000, or as otherwise ordered. Rule 53(h) ARIZONA RULES OF CIVIL PROCEDURE, provides that "[t]he court shall accept the master's findings of facts unless clearly erroneous. . . . [and] the court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

RESPECTFULLY SUBMITTED this 30th day of June 2000.

s/ John E. Thorson
JOHN E. THORSON
Special Master

Appendix E

APPENDIX A

Contested Case No. W1-203
In re the Water Rights of the Gila River Indian Community

INDEX OF ALL PLEADINGS
CONCERNING MOTIONS
HEARD ON APRIL 26, 2000
Docket Numbers in ( )

I. MOTION FOR SUMMARY JUDGMENT (March 1, 1999) filed by Gila Valley Irrigation District, Franklin Irrigation District, San Carlos Irrigation and Drainage District, Salt River Project, and City of Tempe (119).

   A. Joined by: City of Phoenix (125); Cities of Chandler, Glendale, Mesa & Scottsdale (126); City of Goodyear (130); City of Safford (limited joinder) (124); Arizona Public Service Co. (127); BHP Copper Inc. (128); LDS Church (129); Buckeye Irrigation Co. & Arlington Canal Co. (122); Pomerene Water Users Ass'n (limited joinder) (133).

   B. Responses by: San Carlos Apache Tribe (204); Gila River Indian Community (216); United States (232).

   C. Replies by: Gila Valley Irrigation District, Franklin Irrigation District, San Carlos Irrigation & Drainage District, Salt River Project, and City of Tempe (319).

II. MOTION FOR SUMMARY JUDGMENT (March 1, 1999) filed by San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (118).

Appendix E

A. Responses by: Gila Valley Irrigation District & Franklin Irrigation District (205) (joined by San Carlos Irrigation and Drainage District (259)); Gila River Indian Community (219).

B. Reply by: San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (323).

III. MOTION FOR PARTIAL SUMMARY JUDGMENT RE PRECLUSIVE EFFECTS OF PRIOR AGREEMENTS AND DECREES ON WATER RIGHTS OF GILA RIVER INDIAN COMMUNITY (Oct 4, 1999) filed by San Carlos Irrigation and Drainage District (206).

A. Responses by: Gila River Indian Community (272); Gila Valley Irrigation District & Franklin Irrigation District (280); United States (285).

B. Reply by San Carlos Irrigation and Drainage District (300)..

IV. MOTION FOR SUMMARY JUDGMENT REGARDING EFFECT OF PRIOR AGREEMENTS (Oct. 4, 1999) filed by ASARCO Inc. (202).

A. Responses by: Salt River Project & City of Tempe (265); San Carlos Irrigation and Drainage District (268); San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (271); Gila River Indian Community (275); Gila Valley Irrigation District & Franklin Irrigation District (278); United States (283).

B. Replies by ASARCO Inc. (305, 306, 307, 308, 309, 310).

Appendix E

APPENDIX B

PROPOSED ORDER

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

W-1 (Salt)
W-2 (Verde)
W-3 (Upper Gila)
W-4 (San Pedro)
Consolidated

Contested Case No. W1-203

ORDER

THIS MATTER came before the court on the Motion for Summary Judgment filed by the Gila Valley Irrigation District, Franklin Irrigation District, San Carlos Irrigation and Drainage District, Salt River Project, and City of Tempe (Mar. 1, 1999) (Docket No. 119); Motion for Summary Judgment filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (Mar. 1, 1999) (Docket No. 118); Motion for Summary Judgment filed by the San Carlos Irrigation and Drainage District (Oct. 4, 1999) (Docket No. 206); and Motion for Summary Judgment filed by

Appendix E

ASARCO Incorporated (Oct. 4, 1999) (Docket No. 202); consideration of these motions having been referred to the Special Master on Feb. 1, 2000; the Master having filed a report with the Clerk of the Court and provided notice as provided by law; the Master having moved the court for an order approving the report and recommendations; and the court having considered the report, objections to the report, and being fully advised;

THE COURT FINDS that notice of the Master's report has been given as required by law and the period for filing objections to the report has passed;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The motion of the Special Master to approve the report is GRANTED.

2. The court approves and adopts the findings of fact, conclusions of law, and recommended disposition of the pending motions, as set forth in the report.

3. As to the motion filed by the Gila Valley Irrigation District *et al.*, the motion is GRANTED in behalf of original parties to the *Globe Equity Decree*, successors of original parties to the *Globe Equity Decree*, and privities of original parties to the *Globe Equity Decree*. These persons are entitled to assert that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that community, and the United States on their behalf, to water for all purposes appurtenant to the Gila River Indian Reservation, whether allotted or not.

4. Also as to the motion filed by the Gila Valley Irrigation District *et al.*, the motion is GRANTED in behalf of all other claimants in the Gila River system but only to the extent of the lands anticipated in 1935 to be transferred into Indian allotments. For these allotted lands, all other claimants in the Gila River system are entitled to assert that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that community, and the United States on their behalf to water for all purposes appurtenant to the allotted portion of the reservation. An evidentiary hearing is necessary to ascertain whether daims for water for the surplus lands were part of the cause of action asserted by the United States in *Globe Equity*. Until then, the United States and the Community may continue to claim additional water for these surplus lands as against those other claimants in the Gila River system who were not parties to *Globe Equity* or successors or privities thereto.

5. As to the motion filed by the San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation, the motion is GRANTED since these Apache Tribes are privity to an original party to the *Globe Equity Decree*, *i.e.*, the United States, and the interests of the Gila River Indian Community and the these Apache Tribes were sufficiently adverse. These Apache Tribes are entitled to assert that *Globe Equity* was a complete and final adjudication of all claims of the Gila River Indian Community, the members of that community, and the United States on their behalf, to water (including the water of the San Carlos River) for all purposes appurtenant to the Gila River Indian Reservation, whether allotted or not.

6. As to the motion filed by the San Carlos Irrigation and Drainage District, the motion should be DENIED for the reason that the question presented is moot as it has been decided in favor of the San Carlos Irrigation and Drainage District by the federal district court in its enforcement and administration of the *Globe Equity Decree.* Once decreed, the abstracts for water rights subject to these water pooling conditions should contain annotations in the "Other Remarks" field to the applicable provisions of the *Globe Equity Decree* and other applicable agreements, using language substantially similar to that recommended by the Master.

7. As to the motion filed by ASARCO, the motion should be DENIED for the reason that the question presented should be decided by a federal court or arbitrator under the choice of forum provisions contained in the Water Rights Settlement and Exchange Agreement. The appropriate water right abstracts of the Gila River Indian Community and ASARCO, once they are prepared, should be annotated in the "Other Remarks" section with a reference to the Water Rights Settlement and Exchange Agreement and Consent to Assignment, using language substantially similar to that recommended by the Master.

IT IS FURTHER ORDERED that the Arizona Department of Water Resources prepare subsequent hydrographic survey reports in accordance with the determinations made in this order.

IT IS FURTHER ORDERED that proceedings continue in this contested case in accordance with this order.

Appendix E

Dated this ____ day of _____ 2000.

_____
SUSAN R. BOLTON
Judge of the Superior Court

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED MAY 2, 1983 AND FILED MAY 9, 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Globe Equity No. 59

UNITED STATES, et al.,

Plaintiffs,

v.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

ORDER

The Gila River Indian Community ("GRIC") on behalf of itself and its members moves, pursuant to Fed. R. Civ. P. 24(a)(2), for leave to intervene as plaintiffs in this action. Along with its motion, GRIC tenders a proposed complaint. In order to grant the motion, I must decide that GRIC's motion is timely, that GRIC claims an interest related to the *res* of the action or that GRIC is so situated that the disposition of the action may impair or impede GRIC's interests, and that GRIC is inadequately represented by any other party to the action. Fed. R. Civ. P. 24(a)(2). I conclude that the motion to intervene should be GRANTED, but only for the limited purpose set out below.

Appendix F

This case was filed in 1925, and resulted in the entry of a consent decree ten years later. The decree apportions water among all users, Indian and non-Indian, of Gila River water from the Duneau-Verden Valley to the Gila River Indian Reservation. The court has retained jurisdiction over the case all the intervening years for the sole purpose of administering the decree, "this decree otherwise being deemed a final determination of the issues in the cause and of the rights herein defined." Decree of June 29, 1935, Section XIII.

A preliminary issue wants attention before I rule on the merits of the motion. As certain of the defendants that oppose the motion point out, this is not the first time that the tribes represented by GRIC have sought leave to intervene in the action. The tribes sought to do so in 1935, and the court denied their motion. The tribes did not appeal. The defendants contend, citing *Cheyene River Sioux Tribe v. United States*, 338 F.2d 906 (8th Cir. 1964), *cert. denied*, 382 U.S. 815 (1965), that the failure of the tribes to appeal the denial of the 1935 motion to intervene ought to preclude the tribes from raising the issue again now.

True, *Cheyenne River* provides some authority for denying leave to intervene. It could be applied if a party seeks to intervene to vacate a judgment, but has not appealed from the denial of a previous motion to intervene that was decided before the judgment was entered. Nevertheless, there is also authority that permits a court to entertain subsequent motions to intervene based on changed circumstances. *See Calvert Fire Insurance Co. v. Environs Development Corp.* 601 F.2d 851, 857-59 n. 3 (5th Cir. 1979); *Hirshhorn v. Mine Safety Appliance Co.*, 101 F. Supp. 549, 555 (W.D. Pa. 1951).

Appendix F

As I shall discuss below, I have decided not to permit GRIC to intervene for the purpose of vacating the Decree or relitigating the issues resolved by the Decree. Accordingly, the *Cheyenne River* case is not on point. In light of the tribes' failure to appeal the 1935 denial of their motion to intervene, however, I will not consider any circumstances that otherwise would be relevant to deciding the motion, if those circumstances relate to events occurring before 1935. *See Hirshhorn*, 101 F. Supp. at 555.

TIMELINESS

To the extent GRIC seeks to set aside the Decree or to relitigate the issues resolved by the Decree, its motion is not timely and will be DENIED. Courts look to three factors to determine timeliness: (1) the stage of the proceeding; (2) the prejudice to other parties; and (3) the reason for and length of the delay. *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir.), *cert. denied*, 439 U.S. 837 (1978). Intervention after the entry of a consent decree is reserved for exceptional cases and if intervention is sought, then the court is to weigh the first factor heavily against the intervenor. *Id.* In evaluating the second factor, courts have recognized the seriousness of prejudice that can result if a decree is already being fulfilled and the intervenor seeks to counter-mand it. *Id.* In such situations, permitting intervention can "create havoc" and delay needed relief. *Id.* To prevail, therefore, an intervenor must convincingly explain the delay. *Id.*

GRIC's motion comes forty-seven years after the entry of a final decree in the case. To the extent GRIC seeks to vacate the Decree or to relitigate the issues the Decree

resolves, it is hard to imagine a more untimely motion. The prejudice to the parties that is posed by GRIC's avowed intent at this late date to dismantle the Decree is manifest. Water is lifeblood to the land affected by the Decree and the Decree apportions much of the available water. To permit an attack now on the Decree would cast the apportionment of Gila River water into a legal limbo, perhaps of many years duration, that would be detrimental to the interests of all the parties to the Decree.

GRIC does not make any attempt to give reasons for the extraordinary length of their delay. Perhaps as was done in *United States v. Alpine Land and Reservoir Company*, 431 F.2d 763 (9th Cir. 1970), *cert. denied*, 401 U.S. 909 (1971), GRIC would argue that their status as Indians prevented them from intervening sooner. I note, however, that the *Alpine Land* decision rejected this kind of argument and affirmed the trial court's denial of a tribe's motion to intervene. The motion was made in a case which, like this one was filed in 1925 and had resulted in the entry of a consent decree. The tribe sought to relitigate the issues settled by the decree and contended that its motion should be deemed timely because the tribe, along with other Indian tribes, first had gained the right to sue in its own behalf in 1966 through the passage of a federal statute. The Court of Appeals rejected the argument and stated that the timely application requirement of Rule 24 applies to Indians just as it does to other litigants. Thus, if GRIC had made the argument, under *Alpine Land*, I would have rejected it. GRIC does not offer any other excuse for its delay, so I must deem the motion untimely to the extent GRIC seeks to set aside the Decree or to relitigate the issues that the Decree resolves.

To the extent, however, that GRIC seeks leave to intervene in order to be able to enforce proper administration of the Decree, I conclude that the motion is timely. The court has retained jurisdiction over the case in order to insure proper administration of the Decree. Accordingly, any time a party in good faith believes that the Decree is not being properly enforced, a proceeding to enforce the Decree probably would be timely. The record shows that various enforcement proceedings based on the Decree have arisen at occasional intervals since 1935. It follows, therefore, that a motion to intervene by a non-party, for the purpose of filing an enforcement action also can be deemed timely.

The parties to the Decree cannot complain of any prejudice to the extent GRIC only seeks proper enforcement of the Decree. Presumably, proper enforcement of the Decree will benefit all water users affected by the Decree. GRIC does not address the reasons for its delay, but I think it a safe assumption that GRIC has not felt the need to bring an action for proper enforcement until now. My conclusion that intervention is timely to seek enforcement of the Decree but not to relitigate the Decree is consistent with the recent decision in *Arizona v. California*, __ U.S. __ 51 U.S.L.W. 4325, 4328 (March 30, 1983).

INTEREST

I have concluded above that GRIC's motion is not timely to the extent GRIC seeks to vacate the Decree or to litigate issues decided by the Decree. Therefore, I need not consider whether GRIC could show, for this aspect of its motion, whether it has an interest that will be impaired or impeded

absent this kind of interventions I would comment, however, that I doubt GRIC could sustain its burden.

The Decree itself is an accomplished fact, and since 1935 has represented a final adjudication of certain rights that Indian and non-Indian users claimed in the Gila River waters. To the extent GRIC may wish to assert rights other than those litigated in the Decree, those rights, if any, cannot be impaired or impeded by the continued existence of the Decree. The Decree, by definition, would not affect such rights. GRIC could not, therefore, sustain its burden on this issue.

To the extent that GRIC seeks to enforce the Decree, however, Globe Equity No. 59 is still very much alive. The court retained jurisdiction to enforce the Decree. The continued viability of this aspect of the case is demonstrated by the currently pending action of the United States to enforce the Decree. The ongoing enforcement of the Decree naturally has an impact on GRIC's rights under the Decree. Undoubtedly, therefore, GRIC has rights to the water that is the subject of Globe Equity No. 59 that may be impaired or impeded if the Decree is improperly administered.

ADEQUACY OF PRESENT REPRESENTATION

I have concluded above that GRIC's motion is not timely to the extent GRIC seeks to vacate or relitigate what was done in 1935. I need not consider, therefore, whether GRIC could show, for this aspect of its motion, that the representation by the United States of its interest is or was inadequate. I would note, however, that if I were to take a look at the adequacy of representation for the purposes of

permitting GRIC to relitigate or vacate, the relevant time period would be the representation up to and including the entry of the Decree. The failure of GRIC to appeal from the first denial of its motion to intervene, however, would prevent me from considering these facts. It is too late in the day for GRIC now to complain of its representation back in 1935.

To the extent GRIC seeks leave to intervene to enforce the Decree, however, the motion presents a knottier problem. GRIC contends that due to various conflicts of interest the United States cannot adequately represent it in this proceeding. The United States denies that it has inadequately represented GRIC but argues, on behalf of allowing the motion, that differences possibly may develop between the positions of the government and GRIC about enforcement, and that, therefore, I should permit intervention. Certain of the defendants argue that the United States has not been remiss in protecting GRIC's rights, and they point to four separate enforcement suits that the United States has brought to enforce GRIC's rights. Defendants also cite *Gila River Indian Community v. United States*, 684 F.2d 852, 865 (Ct. Cl. 1982), which reviews the history of the litigation and concludes that representation was adequate.

Upon reviewing the parties' contentions in light of the relevant case law, I conclude that for the purposes of Fed. R. Civ. P. 24(a)(2), GRIC has made a sufficient showing of inadequate representation. As the court recently stated in *Arizona v. California*, 51 U.S.L.W. at 4328, in reviewing certain exceptions taken to the Special Master's Report, it was proper to permit intervention in this kind of case because the Indians ought to be allowed "to take their place as

independent qualified members of the modern body politic" and their "participation in litigation critical to their welfare should not be discouraged" (citations omitted). The court, therefore, agreed with the Special Master that the motions to intervene ought to be granted.

The Memorandum and Report on Preliminary Issues of Special Master Elbert P. Tuttle, of August 8, 1979, that the court reviewed *in Arizona v. California* states at page 12:

> "[e]ven though the United States may be satisfying its trust obligations adequately, the Indians have a complaint about their lawyer. In general, the Tribes are probably the best judges of the adequacy of representation of their interest."

Because both GRIC and the United States agree that there are or may be grounds for disagreement between them in this case, and because they are the best judges of their relationship, the conclusion is inescapable that GRIC has shown that for the purposes of Fed. R. Civ. P. 24(a)(2), it is inadequately represented.

Because GRIC has shown that to the extent it seeks leave to intervene to enforce the Decree that its motion is timely, that it claims an interest related to the *res* of the action and is so situated that further disposition of the action may impair or impede its interests, and that it is inadequately represented by any other party to the action, the motion to intervene is GRANTED. The granting of the motion, however, is subject to the condition that any complaint that GRIC files in the

action must seek only to enforce the Decree and not to vacate the Decree or to relitigate issues already determined by the Decree.

IT IS SO ORDERED.

DATED this 2nd day of May, 1983.

s/ [illegible]
United States District Judge

APPENDIX G — OPINION OF THE SUPREME COURT OF THE UNITED STATES IN *ARIZONA, et al. v. SAN CARLOS APACHE TRIBE OF ARIZONA, et al.* DECIDED JULY 1, 1983

SUPREME COURT OF THE UNITED STATES

No. 81-2147

ARIZONA *et al.*

v.

SAN CARLOS APACHE TRIBE OF ARIZONA *et al.*

Argued March 23, 1983.
Decided July 1, 1983.*

OPINION

Justice BRENNAN delivered the opinion of the Court.

These consolidated cases form a sequel to our decision in *Colorado River Conservation District v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976). That case held that (1) the McCarran Amendment, 43 U.S.C. § 666, which waived the sovereign immunity of the United

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* Together with *Arizona et al. v. Navajo Tribe of Indians et al.* (see this Court's Rule 19.4), and No. 81-2188, *Montana et al. v. Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation et al.*, also on certiorari to the same court.

States as to comprehensive state water rights adjudications,[1] provides state courts with jurisdiction to adjudicate Indian water rights held in trust by the United States, and (2) in light of the clear federal policies underlying the McCarran Amendment, a water rights suit brought by the United States in federal court was properly dismissed in favor of a concurrent comprehensive adjudication reaching the same issues in Colorado state court. The questions in this case are parallel: (1) What is the effect of the McCarran Amendment in those States which, unlike Colorado, were admitted to the Union subject to federal legislation that reserved "absolute jurisdiction and control" over Indian lands in the Congress of the United States? (2) If the courts of such States do have jurisdiction to adjudicate Indian water rights, should concurrent federal suits brought by Indian tribes, rather than by the United States, and raising only Indian claims, also be subject to dismissal under the doctrine of *Colorado River?*

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1. The McCarran Amendment provides in relevant part:

"(a) Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. . . ."

Appendix G

I

Colorado River arose out of a suit brought by the Federal Government in the United States District Court for the District of Colorado seeking a declaration of its rights, and the rights of a number of Indian tribes, to waters in certain rivers and their tributaries located in one of the drainage basins of the State of Colorado. In the suit, the Government asserted reserved rights, governed by federal law,[2] as well as rights based on state law. Shortly after the federal suit was commenced, the United States was joined, pursuant to the McCarran Amendment, as a party in the ongoing state-court comprehensive water adjudication being conducted for the same drainage basin. The Federal District Court, on motion of certain of the defendants and intervenors, dismissed the federal suit, stating that the doctrine of abstention required deference to the state proceedings. The Court of Appeals reversed the District Court, and we in turn reversed the Court of Appeals.

We began our analysis in *Colorado River* by conceding that the District Court had jurisdiction over the federal suit under 28 U.S.C. § 1345, the general provision conferring district court jurisdiction over most civil actions brought by the Federal Government. We then examined whether the federal suit was nevertheless properly dismissed in view of the concurrent state-court proceedings. This part of the analysis began by considering "whether the McCarran Amendment provided consent to determine federal reserved

2. See generally *Arizona v. California*, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963); *Winters v. United States*, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908).

rights held on behalf of Indians in state court," 424 U.S., at 809, 96 S.Ct., at 1242, since "given the claims for Indian water rights in [the federal suit], dismissal clearly would have been inappropriate if the state court had no jurisdiction to decide those claims." *Ibid.* We concluded:

"Not only the Amendment's language, but also its underlying policy, dictates a construction including Indian rights in its provisions. [*United States v. District Court for Eagle County*, 401 U.S. 520, 91 S.Ct. 998, 28 L.Ed.2d 278 (1971),] rejected the conclusion that federal reserved rights in general were not reached by the Amendment for the reason that the Amendment '[deals] with an all-inclusive statute concerning "the adjudication of rights to the use of water of a river system." ' *Id.*, at 524, 91 S.Ct., at 1002. This consideration applies as well to federal water rights reserved for Indian reservations." 424 U.S., at 810, 96 S.Ct., at 1242.

In sum, considering the important federal interest in allowing all water rights on a river system to be adjudicated in a single comprehensive state proceeding, and "bearing in mind the ubiquitous nature of Indian water rights in the Southwest," it was clear to us "that a construction of the Amendment excluding those rights from its coverage would enervate the Amendment's objective." *Id.*, at 811, 96 S.Ct., at 1243.

We buttressed this conclusion with an examination of the legislative history of the McCarran Amendment. We also noted:

> "Mere subjection of Indian rights to legal challenge in state court . . . would no more imperil

> those rights than would a suit brought by the Government in district court for their declaration. . . . The Government has not abdicated any responsibility fully to defend Indian rights in state court, and Indian interests may be satisfactorily protected under regimes of state law. The Amendment in no way abridges any substantive claim on behalf of Indians under the doctrine of reserved rights. Moreover, as *Eagle County* said, 'questions [arising from the collision of private rights and reserved rights of the United States], including the volume and scope of particular reserved rights, are federal questions which, if preserved, can be reviewed [by the Supreme Court] after final judgment by the Colorado court.' 401 U.S., at 526, 91 S.Ct., at 1003." 424 U.S., at 812-813, 96 S.Ct., at 1243-1244 (citations omitted).

We then considered the dismissal itself. We found that the dismissal could not be supported under the doctrine of abstention in any of its forms, but that it was justified as an application of traditional principles of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.*, at 817, 96 S.Ct., at 1246, quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183, 72 S.Ct. 219, 221, 96 L.Ed. 200 (1952). We stated that, although the federal courts had a "virtually unflagging obligation . . . to exercise the jurisdiction given them,"424 U.S., at 817, 96 S.Ct., at 1246, there were certain very limited circumstances outside the abstention context in which dismissal was

warranted in deference to a concurrent state court suit. See generally *id.*, at 817-819, 96 S.Ct., at 1246-1247; *Moses H. Cone Hospital v. Mercury Construction Corp.*, 460 U.S. __ __, __ - __, 103 S.Ct. 927, 938-939, 74 L.Ed.2d 765 (1983). In the case at hand, we noted the comprehensive nature of the state proceedings and the considerable expertise and technical resources available in those proceedings, 424 U.S., at 819-820, 96 S.Ct., at 1247-1248. We concluded:

> "[A] number of factors clearly counsel against concurrent federal proceedings. The most important of these is the McCarran Amendment itself. The clear federal policy evinced by that legislation is the avoidance of piecemeal adjudication of water rights in a river system. This policy is akin to that underlying the rule requiring that jurisdiction be yielded to the court first acquiring control of property, for the concern in such instances is with avoiding the generation of additional litigation through permitting inconsistent dispositions of property. This concern is heightened with respect to water rights, the relationships among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are best conducted in unified proceedings. The consent to jurisdiction given by the McCarran Amendment bespeaks a policy that recognizes the availability of comprehensive state systems for adjudication of water rights as the means for achieving these goals." *Id.*, at 819, 96 S.Ct., at 1247 (citations omitted).

For these reasons, and others,[3] we affirmed the judgment of the District Court dismissing the federal complaint.

II

The two petitions considered here arise out of three separate consolidated appeals that were decided within three days of each other by the same panel of the Court of Appeals for the Ninth Circuit. In each of the underlying cases, either the United States as trustee or certain Indian tribes on their own behalf, or both, asserted the right to have certain Indian water rights in Arizona or Montana adjudicated in federal court.

The Montana Cases (No. 81-2188)

In January 1975, the Northern Cheyenne Tribe brought an action in the United States District Court for the District of Montana seeking an adjudication of its rights in certain streams in that State. Shortly thereafter, the United States brought two suits in the same Court, seeking a determination of water rights both on its own behalf and on behalf of a number of Indian Tribes, including the Northern Cheyenne, in the same streams. Each of the federal actions was a general adjudication which sought to determine the rights *inter sese*

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3. The other factors were the apparent absence at the time of dismissal of any proceedings in the District Court other than the filing of the complaint, the extensive involvement of state water rights in the suit, the 300-mile distance between the federal District Court in Denver and the state tribunal, and the Government's apparent willingness to participate in other comprehensive water proceedings in the state courts.

of *all* users of the stream, and not merely the rights of the plaintiffs. On motion of the Northern Cheyenne, its action was consolidated with one of the Government actions. The other concerned Tribes intervened as appropriate.

At about the time that all this activity was taking place in federal court, the State of Montana was preparing to begin a process of comprehensive water adjudication under a recently passed state statute. In July 1975, the Montana Department of Natural Resources and Conservation filed petitions in state court commencing comprehensive proceedings to adjudicate water rights in the same streams at issue in the federal cases.

Both sets of contestants having positioned themselves, nothing much happened for a number of years. The federal proceedings were stayed for a time pending our decision in *Colorado River.* When that decision came down, the State of Montana, one of the defendants in the federal suits, brought a motion to dismiss, which was argued in 1976, but not decided until 1979. Meanwhile, process was completed in the various suits, answers were submitted, and discovery commenced. Over in the state courts, events moved even more slowly, and no appreciable progress seems to have been made by 1979.

In April 1979, the United States brought four more suits in federal court, seeking to adjudicate its rights and the rights of various Indian tribes in other Montana streams. One month later, the Montana legislature amended its water adjudication procedures "to expedite and facilitate the adjudication of existing water rights." Act to Adjudicate Claims of Existing

Water Rights in Montana, § 1(1), 1979 Mont.Laws 1901. The legislation provided for the initiation of comprehensive proceedings by order of the Montana Supreme Court, the appointment of water judges throughout the State, and the consolidation of all existing actions within each water division. It also provided, among other things, that the Montana Supreme Court should issue an order requiring all claimants not already involved in the state proceedings, including the United States on its own behalf or as trustee for the Indians, to file a statement of claim with the Department of Natural Resources and Conservation by a date set by the court or be deemed to have abandoned any water rights claim. *Id.*, § 16, 1979 Mont.Laws, at 1906-1907, codified at Mont.Code Ann. § 85-2-212 (1981).[4] The Montana court issued the required order, and the United States was served with formal notice thereof.[5]

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4. The statute required that the filing period established by the Montana Supreme Court be no less than one year, and that it be subject to extension, but not beyond June 30, 1983. Mont.Code Ann. § 85-2-212(2) (1981). In 1981, the statute was amended to exempt from the filing deadline Indian claims being negotiated with the Montana Reserved Water Rights Compact Commission. Ch. 268, § 4, 1981 Mont. Laws 393, codified at Mont. Code Ann. § 85-2-217 (1981).

5. The Montana Supreme Court set an original filing deadline of January 1, 1982, App. to Pet. for Cert. in No. 81-2188, pp. 138-139, and then extended the deadline to April 30, 1982, *id.*, at 140-141. The United States apparently made protective filings by the deadline on behalf of all the Montana Tribes. Brief for Montana 32. Two of the Indian Tribes apparently filed statements of claim of their own, and five apparently are negotiating with the Montana Reserved Water Rights Compact Commission, see n. 4, *supra*.

Appendix G

In November 1979, the two judges for the District of Montana jointly considered the motions to dismiss in each of the federal actions,[6] and granted each of them. 484 F.Supp. 31 (D.C.1979). The court relied strongly on the new Montana legislation, stating:

"The above-cited sections reflect both the policy and the essential mechanism for adjudication of water rights. Adjudication by adversary proceeding initiated by one claimant against all others in his drainage has been forsaken in favor of blanket adjudication of *all* claims, including federal and federal trust claims. . . . It is clear that the adjudication contemplated by the [1979 legislation] is both comprehensive and efficient. As the general adjudication has been initiated by the Montana Supreme Court, it would seem that the greater wisdom lies in following *Colorado River*, and, on the basis of wise judicial administration, deferring to the comprehensive state proceedings." *Id.*, at 35-36.

The District Court also noted, among other things, that the federal proceedings "are all in their infancy; service of process has been but recently completed," *id.*, at 36, that the state forums were geographically more convenient to the parties, that "[t]he amount of time contemplated for completion of the state adjudication is significantly less than would be necessary for federal adjudication, insofar as the state has provided a special court system solely devoted to water rights adjudication," *ibid.*, and that "[t]he possibility of conflicting adjudications by the concurrent forums . . . looms large and could be partially avoided only by staying

6. See generally C. Wright, Law of Federal Courts 9 (4th ed. 1983).

the pending state adjudication, an action *Colorado River* has intimated is distinctly repugnant to a clear state policy and purpose." *Ibid.*

On appeal, a divided Court of Appeals reversed. *Northern Cheyenne Tribe v. Adsit*, 668 F.2d 1080 (CA9 1982). First, it held that Montana, unlike Colorado, might well lack jurisdiction to adjudicate Indian claims in state court. The court reached this conclusion on the basis of two closely linked documents: the Enabling Act under which Montana was admitted to statehood, and the Montana Constitution promulgated in response to that Enabling Act, both of which provide, in identical terms, that the people inhabiting Montana

> "agree and declare that they forever disclaim all right and title to . . . all lands . . . owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. . . ." Enabling Act of Feb. 22, 1889, § 4, 25 Stat. 677 (North Dakota, South Dakota, Montana, and Washington); Montana Const. Ordinance I.

The Court of Appeals concluded that, by their terms, the Enabling Act and constitutional disclaimer prohibit Montana from exercising even adjudicatory jurisdiction over Indian water rights, and that the McCarran Amendment effected no

change in that disability. It also held, however, that the State might have acquired such jurisdiction under Public L. 83-280, 67 Stat. 588 (1953) (Public Law 280), which, from 1953 until its amendment in 1968, allowed any State that wished to do so to acquire certain aspects of civil and criminal jurisdiction over Indian affairs, and authorized States with constitutional or statutory disclaimers to "amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment" to the assumption of such jurisdiction. *Id.*, § 6, 67 Stat. 590. See generally *Washington v. Yakima Indian Nation*, 439 U.S. 463, 99 S.Ct. 740, 58 L.Ed.2d 740 (1979). The court did not decide whether Montana had amended its constitution in accordance with the requirements of Public Law 280, cf. *Yakima Indian Nation*, *supra*, at 478-493, 99 S.Ct., at 750-757, but it criticized the District Court for not undertaking such an analysis.

The second, and dispositive, ground of decision in the Court of Appeals, however, was its conclusion that "[e]ven if we were to find that Montana had validly repealed the disclaimer language in its constitution, . . . [t]he limited factual circumstances of [*Colorado River*] prevent its application to the Montana litigation. 668 F.2d, at 1087. In reaching this conclusion, the court relied in part on the infancy of both the federal and state proceedings in the Montana litigation, the possible inadequacy of the state proceedings (which it did not discuss in great detail), and the fact that the Indians (who could not be joined involuntarily in the state proceedings) might not be adequately represented by the United States in state court in light of conflicts of interest between the Federal Government's responsibilities as trustee and its own claims to water.

Appendix G

The Arizona Cases (No. 81-2147)

In the mid-1970s, various water rights claimants in Arizona filed petitions in state court to initiate general adjudications to determine conflicting rights in a number of river systems. In early 1979, process was served in one of the proceedings on approximately 12,000 known potential water claimants, including the United States. In July 1981, process was served in another proceeding on approximately 58,000 known water claimants, again including the United States. In each case, the United States was joined both in its independent capacity and as trustee for various Indian tribes.

In March and April of 1979, a number of Indian tribes whose rights were implicated by the state water proceedings filed a series of suits in the United States District Court for the District of Arizona, asking variously for removal of the state adjudications to federal court, declaratory and injunctive relief preventing any further adjudication of their rights in state court, and independent federal determinations of their water rights. A number of defendants in the federal proceedings filed motions seeking remand or dismissal. The District Court, relying on *Colorado River*, remanded the removed actions, and dismissed most of the independent federal actions without prejudice. 484 F.Supp. 778 (D.C.1980).[7] It stayed one of the remaining actions pending the completion of state proceedings. App. to Pet. for Cert. in No. 81-2147, p. D-1.

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7. Two of the actions are in abeyance, apparently pending completion of service of process.

The Tribes appealed from these decisions, with the exception of the remand orders.[8] The Court of Appeals reversed, holding that the Enabling Act under which Arizona was admitted to statehood, 36 Stat. 557 (1910), and the Arizona Constitution, Art. 20, ¶ 4, both of which contain wording substantially identical to the Montana Enabling Act and Constitution, disabled Arizona from adjudicating Indian water claims. *San Carlos Apache Tribe v. Arizona*, 668 F.2d 1093 (CA9 1982); *Navajo Nation v. United States*, 668 F.2d 1100 (CA9 1982). The court remanded to the District Court to determine whether Arizona nevertheless "properly asserted jurisdiction pursuant to Public Law 280." 668 F.2d, at 1098, see 668 F.2d, at 1102. The court did not decide whether, if the State had properly asserted jurisdiction, dismissal would have been proper under *Colorado River*, except to note that "the district judge did not make findings on this issue and the record indicates significant differences between these cases and [*Colorado River*]." 668 F.2d, at 1098, see 668 F.2d, at 1102.

We granted certiorari, __ U.S. __, 103 S.Ct. 50, 74 L.Ed.2d 56 (1982), in order to resolve a conflict among the circuits regarding the role of federal and state courts in adjudicating Indian water rights.[9] We now reverse.

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8. The stay order was certified for interlocutory appeal under 28 U.S.C. § 1292(b). See also *Moses H. Cone Hospital v. Mercury Construction Corp.*, 460 U.S. __ __, __, 103 S.Ct. 927, 933, 74 L.Ed.2d 765 (1983) (upholding appealability of similar stay order under 28 U.S.C. § 1291).

9. In *Jicarilla Apache Tribe v. United States*, 601 F.2d 1116 (CA 10 1979), the Court of Appeals for the Tenth Circuit held that the Enabling Act under which New Mexico was admitted to the Union

(Cont'd)

Appendix G

III

A

At the outset of our analysis, a number of propositions are clear. First, the federal courts had jurisdiction here to hear the suits brought both by the United States and the Indian tribes.[10]

(Cont'd)

(whose language is essentially the same as the Enabling Acts at issue in this case) did not bar state jurisdiction over Indian water rights, and upheld the district court's dismissal of a general water adjudication brought in federal court by the Jicarilla Apache Tribe.

10. The primary ground of jurisdiction for the suits brought by the United States is 28 U.S.C. § 1345. The primary ground of jurisdiction for the suits brought by the Indians is 28 U.S.C. § 1362, which provides in relevant part: "The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe . . . wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." Section 1362 was passed in 1966 in order to give Indian tribes access to federal court on federal issues without regard to the $10,000 amount-in-controversy requirement then included in 28 U.S.C. § 1331, the general federal question jurisdictional statute. Congress contemplated that § 1362 would be used particularly in situations in which the United States suffered from a conflict of interest or was otherwise unable or unwilling to bring suit as trustee for the Indians, and its passage reflected a congressional policy against relegating Indians to state court when an identical suit brought on their behalf by the United States could have been heard in federal court. See S.Rep. No. 1507, 89th Cong., 2d Sess. 2-3 (1966); H.Rep. No. 2040, 89th Cong., 2d Sess. 2, 4 (1966), U.S.Code Cong. & Admin.News 1966, p. 3145. Just as the McCarran Amendment did not do away with federal jurisdiction over water rights claims brought under § 1345, *Colorado River*, 424 U.S., at 806-809, 96 S.Ct., at 1240-1242, there is no reason to think that it limits the jurisdictional reach of § 1362.

Second, it is also clear in this case, as it was in *Colorado River*, that a dismissal or stay of the federal suits would have been improper if there was no jurisdiction in the concurrent state actions to adjudicate the claims at issue in the federal suits. 424 U.S., at 800, 96 S.Ct., at 1236. Third, the parties here agree that the Court of Appeals erred in believing that, in the absence of state jurisdiction otherwise, Public Law 280 would have authorized the States to assume jurisdiction over the adjudication of Indian water rights. To the contrary, Public Law 280 specifically withheld from state courts jurisdiction to adjudicate ownership or right to possession "of any real or personal property, *including water rights*, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States." 25 U.S.C. § 1322(b) (emphasis added); see 28 U.S.C. § 1360(b).[11] Thus, the presence or absence of jurisdiction must rise or fall without reference to whether the States have assumed jurisdiction under Public Law 280.

Finally, it should be obvious that, to the extent that a claimed bar to state jurisdiction in these cases is premised on the respective state Constitutions, that is a question of state law over which the state courts have binding authority. Because, in each of these cases, the state courts have taken jurisdiction over the Indian water rights at issue here, we must assume, until informed otherwise, that-at least insofar

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11. As we explained in *Colorado River*, however, these provisions "only qualif[y] the import of the general consent to state jurisdiction given by [Public Law 280, and] . . . [do] not purport to limit the special consent to jurisdiction given by the McCarran Amendment." 424 U.S., at 812-813, n. 20, 96 S.Ct., at 1243-1244 n. 20.

as state law is concerned-such jurisdiction exists. We must therefore look, for our purposes, to the federal enabling acts and other federal legislation, in order to determine whether there is a federal bar to the assertion of state jurisdiction in these cases.

B

That we were not required in *Colorado River* to interpret the McCarran Amendment in light of any statehood enabling act was largely a matter of fortuity, for Colorado is one of the few Western States that were not admitted to the Union pursuant to an enabling act containing substantially the same language as is found in the Arizona and Montana Enabling Acts.[12] Indeed, a substantial majority of Indian land-including most of the largest Indian reservations-lies in States subject to such enabling acts.[13] Moreover, the reason that Colorado was not subject to such an enabling act, and Arizona and Montana were, has more to do with historical timing than with deliberate congressional selection. Colorado was admitted to the Union in 1876. In 1882, this Court held in

12. See Enabling Act of Feb. 22, 1889, § 4, 25 Stat. 677 (North Dakota, South Dakota, Montana, and Washington); Enabling Act of July 16, 1894, § 3, 28 Stat. 108 (Utah); Enabling Act of June 16, 1906, § 3, 34 Stat. 270 (Oklahoma); Enabling Act of June 20, 1910, §§ 2, 20, 36 Stat. 558-559, 569 (New Mexico and Arizona); Enabling Act of July 7, 1958, § 4, 72 Stat. 339, as amended by Pub.L. No. 86-70, § 2(a), 73 Stat. 141 (Alaska). Idaho and Wyoming, which were both admitted to statehood in 1890 without prior enabling acts, nevertheless inserted disclaimers in their state constitutions. See Idaho Const., Art. 21, § 19; Wyoming Const., Art. 21, § 26.

13. See Brief for the United States 12, and sources cited.

United States v. McBratney, 104 U.S. 621, 26 L.Ed. 869, that the federal courts in Colorado had no criminal jurisdiction in a murder committed by one non-Indian against another on an Indian reservation, pointing out that the case did not concern "the punishment of crimes committed by or against Indians, the protection of the Indians in their improvements, or the regulation by Congress of the alienation and descent of property and the government and internal police of the Indians." *Id.*, at 624, 26 L.Ed. 869. We also suggested, however, that the result might have been different if Congress had expressly reserved all criminal jurisdiction on Indian reservations when Colorado was admitted to the Union, pointing to a similar disclaimer contained in the legislation by which Kansas was admitted to statehood in 1861. *Id.*, at 623-624, 26 L.Ed. 869; see *The Kansas Indians*, 72 U.S. (5 Wall.) 737, 18 L.Ed. 667 (1866). Probably in response to the *McBratney* decision, Congress resumed the practice of including reservations in enabling acts, and did so in the case of virtually every State admitted after 1882. See n. 12, *supra.*

Despite *McBratney* and *The Kansas Indians*, the presence or absence of specific jurisdictional disclaimers has rarely been dispositive in our consideration of state jurisdiction over Indian affairs or activities on Indian lands. In *Draper v. United States*, 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419 (1896), for example, this Court held that, despite the jurisdictional reservation in the Montana Enabling Act, a federal court still did not have jurisdiction over a crime committed on an Indian reservation by one non-Indian against another. We stated:

> "As equality of statehood is the rule, the words relied on here to create an exception cannot be

> construed as doing so, if, by any reasonable meaning, they can be otherwise treated. The mere reservation of jurisdiction and control by the United States of 'Indian lands' does not of necessity signify a retention of jurisdiction in the United States to punish all offenses committed on such lands by others than Indians or against Indians." *Id.*, at 244-245, 17 S.Ct., at 108-109.

Similarly, in *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), we held that a reservation in the Alaska Enabling Act did not deprive the State of the right to regulate Indian fishing licensed by the Department of the Interior, finding that the state regulation neither interfered with Indian self-government nor impaired any right granted or reserved by federal law. Conversely, *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L.Ed. 483 (1832), perhaps the most expansive declaration of Indian independence from state regulation ever uttered by this Court, pertained to one of the original thirteen States, unbound by any enabling act whatsoever. See also, *e.g.*, *The New York Indians*, 72 U.S. (5 Wall.) 761, 769-770, 18 L.Ed. 708 (1867) (reaching same conclusion as *The Kansas Indians*, *supra*, but without benefit of disclaimer). And our many recent decisions recognizing crucial limits on the power of the States to regulate Indian affairs have rarely either invoked reservations of jurisdiction contained in statehood enabling acts by anything more than a passing mention or distinguished between disclaimer States and nondisclaimer States. See, *e.g.*, *New Mexico v. Mescalero Apache Tribe*, 462 U.S. __, 103 S.Ct. 2378, 75 L.Ed.2d __ (1983); *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 102 S.Ct. 3394,

73 L.Ed.2d 1174 (1982); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980); *Bryan v. Itasca County*, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976); *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959).

In light of this history, the parties in this case have engaged in a vigorous debate as to the exact meaning and significance of the Arizona and Montana Enabling Acts.[14] We need not resolve that debate, however, nor need we resort to the more general doctrines that have developed to chart the limits of state authority over Indians, because we are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on state court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment.[15] Cf. *Washington v. Yakima Indian Nations*, 439 U.S. 463, 484-493, 99 S.Ct. 740, 753-757, 58 L.Ed.2d 740 (1979). Congress clearly would have had the right to distinguish between disclaimer and nondisclaimer States in passing the McCarran Amendment. But the Amendment was designed to deal with a general

14. The United States, alone among the respondents, agrees that, in light of the McCarran Amendment, the enabling acts at issue here do not pose an obstacle to state jurisdiction to adjudicate Indian water rights. Brief for the United States 11-15.

15. Because we do not construe the original meaning of the Enabling Acts, we also have no occasion to decide (assuming the relevance of the Acts in the first place) whether the McCarran Amendment's grant of permission to the states to adjudicate Indian water rights was effected by a partial repeal of the Enabling Acts, or by an exercise of the very power reserved to Congress under those Acts.

problem arising out of the limitations that federal sovereign immunity placed on the ability of the States to adjudicate water rights, and nowhere in its text or legislative history do we find any indication that Congress intended the efficacy of the remedy to differ from one State to another. Moreover, we stated in *Colorado River* that "bearing in mind the ubiquitous nature of Indian water rights in the Southwest, it is clear that a construction of the Amendment excluding those rights from its coverage would enervate the Amendment's objective." 424 U.S., at 811, 96 S.Ct., at 1243. The "ubiquitous nature of Indian water rights" is most apparent in the very States to which Congress attached jurisdictional reservations. See *supra*, at 3210-3211. To declare now that our holding in *Colorado River* applies only to that minority of Indian water claims located in States without jurisdictional reservations would constitute a curious and unwarranted retreat from the rationale behind our previous holding, and would work the very mischief that our decision in *Colorado River* sought to avoid. We need not rely on the possibly overbroad statement in *Draper v. United States* that "equality of statehood is the rule," 164 U.S., at 244, 17 S.Ct., at 108, in order to conclude that, in this context at least, "equality of statehood" is sensible, necessary, and, most important, consistent with the will of Congress.

IV

The second crucial issue in these cases is whether our analysis in *Colorado River* applies with full force to federal suits brought by Indian tribes, rather than by the United

States, and seeking adjudication only of Indian water rights.[16] This question is not directly answered by *Colorado River*, because we specifically reserved in that case "[w]hether similar considerations would permit dismissal of a water suit brought by a private party in federal district court." 424 U.S., at 820, n. 26, 96 S.Ct., at 1248, n. 26. On reflection, however, we must agree with Justice STEVENS, who, in dissenting

16. As is apparent from our discussion of the facts, *supra*, at 3207 - 3209, some of the cases now before us are suits brought by the United States. In light of our express holding in *Colorado River*, what we say here with regard to the suits brought by the Indians must apply *a fortiori* to the suits brought by the United States. In addition, some of the cases before us sought adjudication of *all* the rights to a particular water system, rather than merely Indian or other federal water rights, and it is argued that these suits avoid the "piecemeal adjudication of water rights" which we found in *Colorado River* to be inconsistent with federal policy. 424 U.S., at 819, 96 S.Ct., at 1247. See, *e.g.*, Brief of Respondent Northern Cheyenne Tribe 25-29. Given, however, that one of the best arguments in favor of retaining federal jurisdiction in Indian water cases is that Indian water rights can be adjudicated separately and then incorporated into the results of the comprehensive state proceedings, see *infra*, at 3213, the proper analysis of the more ambitious federal suits at issue here must also follow *a fortiori* from our discussion in text. A comprehensive federal adjudication going on at the same time as a comprehensive state adjudication might not literally be "piecemeal." It is, however, duplicative, wasteful, inconsistent with the McCarran Amendment's policy of "recogniz[ing] the availability of comprehensive state systems for adjudication of water rights as the means for [conducting unified water rights proceedings]," *id.*, at 819, 96 S.Ct., at 1247, likely to "generat[e] additional litigation" as a result of "inconsistent dispositions of property," *ibid.*, and permeated with state law issues entirely tangential to any conceivable federal interest, see *id.*, at 820, 96 S.Ct., at 1248; cf. *Moses H. Cone Hospital*, 460 U.S., at ——, 103 S.Ct. 927.

from our decision, wrote: "[T]he Federal Government surely has no lesser right of access to the federal forum than does a private party, such as an Indian asserting his own claim. If this be so, today's holding will necessarily restrict the access to federal court of private plaintiffs asserting water rights claims in *Colorado.*" *Id.*, at 827, 96 S.Ct., at 1251.

The United States and the various Indian respondents raise a series of arguments why dismissal or stay of the federal suit is not appropriate when it is brought by an Indian tribe and only seeks to adjudicate Indian rights. (1) Indian rights have traditionally been left free of interference from the States. (2) State courts may be inhospitable to Indian rights. (3) The McCarran Amendment, although it waived United States sovereign immunity in state comprehensive water adjudications, did not waive *Indian* sovereign immunity. It is therefore unfair to force Indian claimants to choose between waiving their sovereign immunity by intervening in the state proceedings and relying on the United States to represent their interests in state court, particularly in light of the frequent conflict of interest between Indian claims and other federal interests and the right of the Indians under 28 U.S.C. § 1362 to bring suit on their own behalf in federal court.[17] (4) Indian water rights claims are generally based on

17. This argument, of course, suffers from the flaw that, although the McCarran Amendment did not waive the sovereign immunity of Indians as *parties* to state comprehensive water adjudications, it did (as we made quite clear in *Colorado River*) waive sovereign immunity with regard to the Indian *rights* at issue in those proceedings. Moreover, contrary to the submissions by certain of the parties, any judgment against the United States, as

(Cont'd)

federal rather than state law. (5) Because Indian water claims are based on the doctrine of "reserved rights," and take priority over most water rights created by state law, they need not as a practical matter be adjudicated *inter sese* with other water rights, and could simply be incorporated into the comprehensive state decree at the conclusion of the state proceedings.

Each of these arguments has a good deal of force. We note, though, that very similar arguments were raised and rejected in *Eagle County* and *Colorado River*.[18] More important, all of these

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(Cont'd)

trustee for the Indians, would ordinarily be binding on the Indians. In addition, there is no indication in these cases that the state courts would deny the Indian parties leave to intervene to protect their interests. Thus, although the Indians have the right to refuse to intervene even if they believe that the United States is not adequately representing their interests, the practical value of that right in this context is dubious at best.

18. See, *e.g.*, Brief for the United States in *United States v. District Court for Eagle County*, O.T.1970, No. 87, p. 19 ("excluding reserved water rights of the United States from State adjudication proceedings would not produce the 'undesirable, impractical and chaotic situation' that the Colorado Supreme Court envisioned"); Brief for the United States in *Colorado River Conservation District v. United States*, O.T.1975, No. 74-940, p. 33 (federal suit brought by United States involves only questions of federal law); pp. 35-36 (federal forum necessary to avoid "local prejudice"); pp. 43-44 (federal adjudication of Indian water rights can be incorporated into comprehensive state proceedings); pp. 50 (separate proceedings practical, as long as all determinations are ultimately integrated); pp. 53-54 (construing McCarran Amendment to grant States jurisdiction to adjudicate Indian water rights would ignore "unique legal status of Indian property").

arguments founder on one crucial fact: If the state proceedings have jurisdiction over the Indian water rights at issue here, as appears to be the case,[19] then concurrent federal proceedings are likely to be duplicative and wasteful, generating "additional litigation through permitting inconsistent dispositions of property." *Colorado River*, 424 U.S., at 819, 96 S.Ct., at 1247. Moreover, since a judgment by either court would ordinarily be res judicata in the other, the existence of such concurrent proceedings creates the serious potential for spawning an unseemly and destructive race to see which forum can resolve the same issues first-a race contrary to the entire spirit of the McCarran Amendment and prejudicial, to say the least, to the possibility of reasoned decisionmaking by either forum. The United States and many of the Indian tribes recognize these concerns, but in responding to them they cast aside the sort of sound argument generally apparent in the rest of their submissions and rely instead on vague statements of faith and hope. The United States, for example, states that adjudicating Indian water right rights in federal court, despite the existence of a comprehensive state proceeding, would not

> "entail any duplication or potential for inconsistent judgments. The federal court will quantify the Indian rights only if it is asked to do so before the State court has embarked on the task. And, of course, once the United States district court has indicated its determination to perform that limited role, *we assume* the State tribunal will turn its attention to the typically more complex business of adjudicating all other claims on the

19. But cf. n. 20, *infra.*

> stream. *In the usual case*, the federal court will have completed its function earlier and its quantification will simply be incorporated in the comprehensive State court decree." Brief for the United States 30 (emphasis added).

Similarly, the Navajo Nation states:

> "There is no reasonably foreseeable danger that [the federal action brought by the Navajo] will duplicate or delay state proceedings or waste judicial resources. While the Navajo claim proceeds in federal court, the state court *can* move forward to assess, quantify, and rank the 58,000 state claims. The Navajo federal action will be concluded long before the state court has finished its task." Brief for the Navajo Nation 22 (emphasis added; footnote omitted).

The problem with these scenarios, however, is that they assume a cooperative attitude on the part of state courts, state legislatures, and state parties which is neither legally required nor realistically always to be expected. The state courts need not "turn their attention" to other matters if they are prompted by state parties to adjudicate the Indian claims first. Moreover, considering the specialized resources and experience of the state courts, it is not at all obvious that the federal actions "will be concluded long before" the state courts have issued at least preliminary judgments on the question of *Indian water rights*. *Cf.* 484 F.Supp., at 36.

Appendix G

The McCarran Amendment, as interpreted in *Colorado River*, allows and encourages state courts to undertake the task of quantifying Indian water rights in the course of comprehensive water adjudications. Although adjudication of those rights in federal court instead might in the abstract be practical, and even wise, it will be neither practical nor wise as long as it creates the possibility of duplicative litigation, tension and controversy between the federal and state forums, hurried and pressured decisionmaking, and confusion over the disposition of property rights.

Colorado River, of course, does not require that a federal water suit must always be dismissed or stayed in deference to a concurrent and adequate comprehensive state adjudication. Certainly, the federal courts need not defer to the state proceedings if the state courts expressly agree to stay their own consideration of the issues raised in the federal action pending disposition of that action. Moreover, it may be in a particular case that, at the time a motion to dismiss is filed, the federal suit at issue is well enough along that its dismissal would itself constitute a waste of judicial resources and an invitation to duplicative effort. See *Colorado River*, 424 U.S., at 820, 96 S.Ct., at 1248; *Moses H. Cone Hospital*, 460 U.S., at __, 103 S.Ct., at 937. Finally, we do not deny that, in a case in which the arguments for and against deference to the state adjudication were otherwise closely matched, the fact that a federal suit was brought by Indians on their own behalf and sought only to adjudicate Indian rights should be figured into the balance. But the most important consideration in *Colorado River*, and the most important consideration in any federal water suit concurrent to a comprehensive state proceeding, must be the "policy

underlying the McCarran Amendment," 424 U.S., at 820, 96 S.Ct., at 1248; see *Moses H. Cone Hospital*, *supra*, 460 U.S., at __, 103 S.Ct., at 937, and, despite the strong arguments raised by the respondents, we cannot conclude that water rights suits brought by Indians and seeking adjudication only of Indian rights should be excepted from the application of that policy or from the general principles set out in *Colorado River*. In the cases before us, assuming that the state adjudications are adequate to quantify the rights at issue in the federal suits,[20] and taking into account the McCarran Amendment policies we have just discussed, the expertise and administrative machinery available to the state courts, the infancy of the federal suits, the general judicial bias against piecemeal litigation, and the convenience to the parties, we must conclude that the District Courts were correct in deferring to the state proceedings.[21]

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20. In a number of these cases, respondents have raised challenges, not yet addressed either by the Court of Appeals or in this opinion, to the jurisdiction or adequacy of the particular state proceeding at issue to adjudicate some or all of the rights asserted in the federal suit. These challenges remain open for consideration on remand. Moreover, the courts below should, if the need arises, allow whatever amendment of pleadings not prejudicial to other parties may be necessary to preserve in federal court those issues as to which the state forum lacks jurisdiction or is inadequate.

21. We leave open for determination on remand as appropriate whether the proper course in such cases is a stay of the federal suit or dismissal without prejudice. See *Moses H. Cone Hospital*, 460 U.S., at __, 103 S.Ct., at 943 (reserving issue). In either event, resort to the federal forum should remain available if warranted by a significant change of circumstances, such as, for example, a decision by a state court that it does not have jurisdiction over some or all of these claims after all.

Appendix G

V

Nothing we say today should be understood to represent even the slightest retreat from the general proposition we expressed so recently in *New Mexico v. Mescalero Apache Tribe*, *ante*, 462 U.S., at __, 103 S.Ct., at 2385 (1983): "Because of their sovereign status, [Indian] tribes and their reservation lands are insulated in some respects by an 'historic immunity from state and local control,' *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152, 93 S.Ct. 1267, 1272, 36 L.Ed.2d 114 (1973), and tribes retain any aspect of their historical sovereignty not 'inconsistent with the overriding interests of the National Government.' *Washington v. Confederated Tribes*, [447 U.S. 134, 153, 100 S.Ct. 2069, 2081, 65 L.Ed.2d 10 (1980)]." Nor should we be understood to retreat from the general proposition, expressed in *Colorado River*, that federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." 424 U.S., at 817, 96 S.Ct., at 1246. See generally *Moses H. Cone Hospital*, *supra*, 460 U.S., at __ - __, 103 S.Ct., at 936-937. But water rights adjudication is a virtually unique type of proceeding, and the McCarran Amendment is a virtually unique federal statute, and we cannot in this context be guided by general propositions.

We also emphasize, as we did in *Colorado River*, that our decision in no way changes the substantive law by which Indian rights in state water adjudications must be judged. State courts, as much as federal courts, have a solemn obligation to follow federal law. Moreover, any state court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought for review

before this Court, a particularized and exacting scrutiny commensurate with the powerful federal interest in safeguarding those rights from state encroachment.

The judgments of the Court of Appeals in each of these cases is reversed and the cases are remanded for further proceedings consistent with this opinion.[22]

So ordered.

Justice MARSHALL, dissenting.

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976), this Court recognized a narrow rule of abstention governing controversies involving federal water rights. We stated that in light of "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them," *id.*, at 817, 96 S.Ct., at 1246,"[o]nly the clearest of justifications," *id.*, at 819, 96 S.Ct., at 1247, will warrant abstention in favor of

22. The motion of the Blackfeet Indian Tribe, filed March 22, 1983, to suspend all proceedings in this Court rejecting the water rights of the Blackfeet Indian Tribe, Browning, Montana, and to preclude the Solicitor General or any other attorney of the Department of Justice from purporting to represent that Tribe in these proceedings is denied. The motion of the White Mountain Apache Tribe and the Blackfeet Indian Tribe, filed June 3, 1983, for leave to file a motion to dismiss for lack of in personam and subject matter jurisdiction in this Court over the state court water rights adjudication proceedings is denied. Treating the papers whereon the motion filed June 3, 1983 was submitted as a motion for leave to file a brief *amicus curiae*, and treating the accompanying papers as a brief *amicus curiae*, leave to file the brief is granted.

a concurrent state proceeding. Substantially for the reasons set forth in Justice STEVENS' dissenting opinion, I believe that abstention is not appropriate in these cases. Unlike the federal suit in *Colorado River*, the suits here are brought by Indian tribes on their own behalf. These cases thus implicate the strong congressional policy, embodied in 28 U.S.C. § 1362, of affording Indian tribes a federal forum. Since § 1362 reflects a congressional recognition of the "great hesitancy on the part of tribes to use State courts," S.Rep. No. 1507, 89th Cong., 2d Sess. 2 (1966), tribes which have sued under that provision should not lightly be remitted to asserting their rights in a state forum. Moreover, these cases also differ from *Colorado River* in that the exercise of federal jurisdiction here will not result in duplicative federal and state proceedings, since the District Court need only determine the water rights of the tribes. I therefore cannot agree that this is one of those "exceptional" situations justifying abstention. 424 U.S., at 818, 96 S.Ct., at 1246.

Justice STEVENS, with whom Justice BLACKMUN joins, dissenting.

"Nothing in the McCarran Amendment or in its legislative history can be read as limiting the jurisdiction of the federal courts." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 821, n. 2, 96 S.Ct. 1236, 1248, n. 2, 47 L.Ed.2d 483 (1976) (Stewart, J., dissenting). That amendment is a waiver, not a command.[1] It *permits* the United States to be joined as a defendant in state water rights adjudications; it does not purport to

1. See *ante*, at 3204, n. 1 (quoting the statutory text).

diminish the United States' right to litigate in a federal forum and it is totally silent on the subject of Indian tribes' rights to litigate anywhere. Yet today the majority somehow concludes that it commands the federal courts to defer to state court water rights proceedings, even when Indian water rights are involved. Although it is customary for the Court to begin its analysis of questions of statutory construction by examining the text of the relevant statute,[2] one may search in vain for any textual support for the Court's holding today.

"Most of the land in these reservations is and always has been arid. . . . It can be said without overstatement that when the Indians were put on these reservations they were not considered to be located in the most desirable area of the Nation. It is impossible to believe that when Congress created the great Colorado River Indian Reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of the desert kind-hot, scorching sands-and that water from the river would be essential to the life of the Indian people and to the animals they hunted and the crops they raised." *Arizona v. California*, 373 U.S. 546, 598-599, 83 S.Ct. 1468, 1496-1497, 10 L.Ed.2d 542 (1963)

2. See, *e.g.*, *Bankamerica Corp. v. United States*, __ U.S. __, __ - __, 103 S.Ct. 2266, 2270-2271, 75 L.Ed.2d __ (1983); *Morrison-Knudsen Construction Co. v. Director, Office of Workers' Compensation Programs*, __ U.S. __, __ - __, 103 S.Ct. 2045, 2049-2050, 76 L.Ed.2d 194 (1983); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982); *Bread Political Action Committee v. Federal Election Comm'n*, 455 U.S. 577, 580-581, 102 S.Ct. 1235, 1237-1238, 71 L.Ed.2d 432 (1982); *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980).

Appendix G

This Court has repeatedly recognized that the Government, when it created each Indian Reservation, "intended to deal fairly with the Indians by reserving for them the waters without which their lands would have been valueless." *Id.*, at 600, 83 S.Ct., at 1497. See *Winters v. United States*, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908); *United States v. Powers*, 305 U.S. 527, 532, 59 S.Ct. 344, 346, 83 L.Ed. 330 (1939); *Arizona v. California*, 373 U.S. 546, 600-601, 83 S.Ct. 1468, 1497-1498, 10 L.Ed.2d 542 (1963); *Cappaert v. United States*, 426 U.S. 128, 138-139, 96 S.Ct. 2062, 2069-2070, 48 L.Ed.2d 523 (1976). This doctrine, known as the *Winters* doctrine, is unquestionably a matter of *federal*, not state, law. See *ante*, at 3216; *Colorado River*, *supra*, 424 U.S., at 813, 96 S.Ct., at 1244. Its underlying principles differ substantially from those applied by the States to allocate water among competing claimants. Unlike state-law claims based on prior appropriation, Indian reserved water rights are not based on actual beneficial use and are not forfeited if they are not used. Vested no later than the date each reservation was created, these Indian rights are superior in right to all subsequent appropriations under state law. Not all of the issues arising from the application of the *Winters* doctrine have been resolved, because in the past the scope of Indian reserved rights has infrequently been adjudicated.[3] The important task of elaborating and clarifying these federal law issues in the cases now before the Court, and in future cases, should be performed by federal rather than state courts whenever possible.

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3. See generally Note, Indian Reserved Water Rights: The *Winters* of Our Discontent, 88 Yale L.J. 1689, 1690-1701 (1979).

Appendix G

Federal adjudication of Indian water rights would not fragment an otherwise unified state court proceeding. Since Indian reserved claims are wholly dissimilar to state-law water claims, and since their amount does not depend on the total volume of water available in the water source or on the quantity of competing claims, it will be necessary to conduct separate proceedings to determine these claims even if the adjudication takes place in state court. Subsequently the state court will incorporate these claims-like claims under state law or federal Government claims that have been formally adjudicated in the past-into a single inclusive, binding decree for each water source. Thus, as Justice Stewart wrote in dissent in *Colorado River*,"Whether the virtually identical separate proceedings take place in a federal court or a state court, the adjudication of the claims will be neither more nor less 'piecemeal.' Essentially the same process will be followed in each instance." 424 U.S., at 824, 96 S.Ct., at 1250.

To justify virtual abandonment of Indian water rights claims to the state courts, the majority relies heavily on *Colorado River Water Conservation District*, *supra*, which in turn discovered an affirmative policy of federal judicial abdication in the McCarran Amendment.[4] I continue to

4. Although giving lip service to the balancing of factors set forth in *Colorado River*, the Court essentially gives decisive weight to one factor: the policy of unified water rights adjudication purportedly embodied in the McCarran Amendment. *Ante*, at 3206, 3215. The Court's entire discussion of the applicability in this case of the four *Colorado River* factors is found in a single vague sentence. *Ante*, at 3215. It is worth noting, however, that the Court leaves open the possibility that Indian water claims will occasionally be heard in federal court. *Ante*, at 3215.

believe that *Colorado River* read more into that amendment than Congress intended, and cannot acquiesce in an extension of its reasoning. Although the Court's decision in *Colorado River* did, indeed, foreshadow today's holding, it did not involve an Indian tribe's attempt to litigate on its own behalf, 424 U.S., at 820, n. 26, 96 S.Ct., at 1248, n. 26. The majority today acknowledges that the question in these cases was "not directly answered," but in fact was "specifically reserved," in *Colorado River. Ante*, 3212 - 3213.

Although in some respects Indian tribes' water claims are similar to other reserved federal water rights, different treatment is justified. States and their citizens may well be more antagonistic toward Indian reserved rights than other federal reserved rights, both because the former are potentially greater in quantity and because they provide few direct or indirect benefits to non-Indian residents.[5] Indians have historically enjoyed a unique relationship with the federal government, reflecting the tribes' traditional sovereign status, their treaty-based right to federal protection,

5. See Comptroller General of the United States, Reserved Water Rights for Federal and Indian Reservations: A Growing Controversy in Need of Resolution 18 (Nov. 1978) ("Indian reserved water rights present a more pressing problem than Federal reserved water rights. Unlike federal reservations, which are not expected to have large consumptive water demands, many Indian reservations are expected to require significant water quantities to satisfy reservation purposes.") In addition, national forests, national parks, and other federal uses provide benefits to non-Indian residents, including lumbering operations, grazing, recreational purposes, watershed protection, and tourist revenues. See Note, Adjudication of Indian Water Rights Under the McCarran Amendment: Two Courts are Better Than One, 71 Georgetown L.J. 1023, 1053-1054 (1983).

and their special economic problems. Recently the Court reaffirmed " 'the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.' " *United States v. Mitchell*, __ U.S. __, __, 103 S.Ct. 2961, 2972, 75 L.Ed.2d __ (1983). See also *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 168-175, 93 S.Ct. 1257, 1260-1264, 36 L.Ed.2d 129 (1973); *Rice v. Olson*, 324 U.S. 786, 789, 65 S.Ct. 989, 991, 89 L.Ed. 1367 (1945).[6]

One important aspect of the special relationship is 28 U.S.C. § 1362, which embodies a federal promise that Indian tribes will be able to invoke the jurisdiction of federal courts to resolve matters in controversy arising under federal law.[7]

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6. Congress has been particularly solicitous of Indian property rights, including water rights, even when it has expanded the governmental role of the States with respect to Indian affairs. In 1953, a year after the McCarran Amendment was passed, Congress authorized the States to assume general criminal and limited civil jurisdiction within "Indian country," but it expressly withheld certain matters, including water rights, from state adjudication. Pub.L. 280, 67 Stat. 588, codified at 25 U.S.C. § 1322(b); 28 U.S.C. § 1360(b). The Court held in *Colorado River* that this proviso to P.L. 280 did not purport to limit the special consent to jurisdiction given by the McCarran Amendment. 424 U.S., at 812-813, n. 20, 96 S.Ct., at 1243-1244, n. 20. But, even assuming that state courts have jurisdiction to adjudicate Indian water claims, the proviso casts serious doubt on the assertion that Congress intended state courts to be the *preferred* forum.

7. The statute provides:

"The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band

(Cont'd)

Congress thereby assured Indians a neutral federal forum—a guarantee whose importance should not be underestimated.[8] The Senate report noted,

> "There is great hesitancy on the part of tribes to use State courts. This reluctance is founded partially on the traditional fear that tribes have

(Cont'd)

> with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States."

Enacted in 1966, § 1362 was designed to remove the $10,000 jurisdictional amount limitation with respect to these claims.

8. The majority recognizes that there is "a good deal of force" to the assertion that "[s]tate courts may be inhospitable to Indian rights." *Ante*, at 3213. Federal officials responsible for Indian affairs have consistently recognized the appropriateness of deciding Indian claims in federal, not state, courts. See, *e.g.*, H.R.Rep. No. 2040, 89th Cong., 2d Sess. 2 (1966) (describing position of Interior Department); National Water Comm'n, Water Policies for the Future, Final Report to the President and to the Congress of the United States 478-479 (1973). American Indian Policy Review Commission, Task Force Four, Report on Federal, State, and Tribal Jurisdiction 176 (Committee Print 1976); American Indian Policy Review Commission, Final Report 333-334 (Committee Print 1977).

Although the Court correctly observes that state courts, "as much as federal courts, have a solemn obligation to follow federal law," *ante*, at 3216, state judges, unlike federal judges, tend to be elected and hence to be more conscious of the prevailing views of the majority. Water rights adjudications, which will have a crucial impact on future economic development in the West, are likely to stimulate great public interest and concern. See Note, *supra* n. 5, at 1052-1053.

had of the States in which their reservations are situated. Additionally, the Federal courts have more expertise in deciding questions involving treaties with the Federal Government, as well as interpreting the relevant body of Federal law that has developed over the years." S.Rep. No. 1507, 89th Cong., 2d Sess. 2 (1966).

Section 1362 also assured the tribes that they need not rely on the federal government to protect their interests, an important safeguard in light of the undeniable potential for conflicts of interest between Indian claims and other federal Government claims.[9]

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9. The Senate report stated:

> "Currently, the right of the Attorney General of the United States to bring civil actions on behalf of tribes without regard to jurisdictional amount, a power conferred on him by special statutes, is insufficient in those cases wherein the interest of the Federal Government as guardian of the Indian tribes and as Federal sovereign conflict, in which case the Attorney General will decline to bring the action.
>
> "The proposed legislation will remedy these defects by making it possible for the Indian tribes to seek redress using their own resources and attorneys." S.Rep. No. 1507, *supra*, at 2.

If federal courts defer to state court proceedings, then the Indian tribes will be unable to represent themselves without waiving tribal sovereign immunity from state court jurisdiction.

Appendix G

Despite the silence of the McCarran Amendment regarding Indian tribal claims, and the clear promise of a federal forum embodied in § 1362, the Court holds that considerations of "wise judicial administration" require that Indian claims, governed by federal law, must be relegated to the state courts. It is clear to me that the words "wise judicial administration" have been wrenched completely from their ordinary meaning. One of the Arizona proceedings, in which process has been served on approximately 58,000 known water claimants, illustrates the practical consequences of giving the state courts the initial responsibility for the adjudication of Indian water rights claims. Because this Court may not exercise appellate jurisdiction in state court litigation until after a final judgment has been entered by the highest court of the State, no federal tribunal will be able to review any federal question in the case until the entire litigation has been concluded. The Court promises that "any state court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought for review before this Court, a particularized and exacting scrutiny commensurate with the powerful federal interest in safeguarding those rights from state encroachment." *Ante*, at 3216. If a state court errs in interpreting the *Winters* doctrine or an Indian treaty, and this Court ultimately finds it necessary to correct that error, the entire comprehensive state court water rights decree may require massive readjustment. If, however, the quantification of Indian rights were to be adjudicated in a separate federal proceeding-which presumably would be concluded long before the mammoth, conglomerate state adjudication comes to an end-the state judgment would rest on a solid foundation that this Court should never need to examine.

The Court acknowledges the logical force of these propositions, but sets them aside because the exercise of concurrent federal court jurisdiction would create "the possibility of duplicative litigation, tension and controversy between the federal and state forums, hurried and pressured decisionmaking, and confusion over the disposition of property rights." *Ante*, at 3215. These possibilities arise, as the Court candidly admits, from a pessimistic assessment of the likelihood that state courts, state legislatures, and state parties will assume a "cooperative attitude." In other words, the state courts might engage in an unseemly rush to judgment in order to give the Indians less water than they fear that the federal courts might provide. If state courts cannot be expected to adhere to orderly processes of decisionmaking because of their hostility to the Indians, the statutory right accorded to Indian tribes to litigate in a federal tribunal is even more important.

In my view, a federal court whose jurisdiction is invoked in a timely manner by an Indian tribe has a duty to determine the existence and extent of the tribe's reserved water rights under federal law. It is inappropriate to stay or dismiss such federal court proceedings in order to allow determinations by state courts. In the cases before us today, complaints were timely filed in federal court by the Indian tribes, before or shortly after the institution of state water adjudication proceedings; the state proceedings in Arizona and Montana remain at an early stage. The district court should therefore grant the tribes leave to amend the various complaints, where necessary, to seek adjudication of the scope and quantity of Indian reserved water rights and to eliminate other claims; the suits should then proceed in federal court.

Today, however, on the tenuous foundation of a perceived Congressional intent that has never been articulated in statutory language or legislative history, the Court carves out a further exception to the "virtually unflagging obligation" of federal courts to exercise their jurisdiction. The Court does not-and cannot-claim that it is faithfully following general principles of law. After all, just four months ago in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, the Court wrote:

> "we emphasize that our task in cases such as this is not to find some substantial reason for the *exercise* of federal jurisdiction by the district court; rather, the task is to ascertain whether there exist 'exceptional' circumstances, the 'clearest of justifications,' that can suffice under *Colorado River* to justify the *surrender* of that jurisdiction. Although in some rare circumstances the presence of state-law issues may weigh in favor of that surrender . . . the presence of federal-law issues must always be a major consideration weighing against surrender." __ U.S. __, __, 103 S.Ct. 927, 942, 74 L.Ed.2d 765.

Today that "major consideration" is but a peppercorn in the scales, outweighed by the phantom command of the McCarran Amendment. Instead of trying to reconcile this decision with *Moses H. Cone* and other prior cases, the Court merely says, "But water rights adjudication is a virtually unique type of proceeding, and the McCarran Amendment is a virtually unique federal statute, and we cannot in this context be guided by general propositions." *Ante*, at 3216.

I submit that it is the analysis in Part IV of the Court's opinion that is "virtually unique." Accordingly, I respectfully dissent.

APPENDIX H — SPECIAL PROCEDURAL ORDER PROVIDING FOR INTERLOCUTORY APPEALS AND CERTIFICATIONS DATED AND FILED SEPTEMBER 26, 1989

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Action No. WC-1, WC-2, WC-3 and WC-4 (consolidated)

Maricopa County Superior Court Nos. W-1, W-2, W-3 and W-4 (consolidated)

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE IN THE GILA RIVER SYSTEM AND SOURCE

SPECIAL PROCEDURAL ORDER PROVIDING FOR INTERLOCUTORY APPEALS AND CERTIFICATIONS

Pursuant to Article 6, § 5 of the Arizona Constitution, A.R.S. §§ 45-259 and 12-2101, and Rule 19(a)(3) and (f), Arizona Rules of Civil Appellate Procedure, 17B A.R.S., the following procedure is adopted for interlocutory appeals and certifications arising from this general adjudication:

A. Scope

Any party to this general adjudication of water rights under A.R.S. § 45-251 *et seq.* may petition the Supreme Court to review by interlocutory appeal any ruling of the ~~superior~~ court. Also, the trial court may certify to the Supreme Court questions deemed substantial and properly the subject of interlocutory review or appeal under this rule.

Appendix H

B. Grounds

The decision whether to grant or deny a petition for interlocutory review or appeal or certification shall be discretionary. In the exercise of its discretion the Supreme Court may consider, without limitation, the following factors:

1. That the ruling of the superior court is in conflict with a ruling from another adjudication proceeding pursuant to A.R.S. § 45-251 *et seq.*;

2. That the ruling has decided an important question of law that should be decided by the Supreme Court before further proceedings or final judgment in the trial court;

3. That substantial savings of time, expense, or resources may be achieved through early appellate review;

4. That the interests of justice otherwise require early appellate review;

5. Those factors described in Rule 23(c)(4), Ariz.R.Civ. App.P., 17B A.R.S., or Rule 3, Ariz.R.P.Spec.Act., 17B A.R.S.

C. Time for Filing of Petition; Cross-Petition

A petition or certification seeking interlocutory review or appeal of a trial court ruling made prior to the effective date of this order shall be filed within one hundred fifty days after the effective date of this order. A petition or certification seeking interlocutory review or appeal of a trial court ruling

made after the effective date of this order shall be filed within ninety days after the trial court's ruling. For purposes of this rule, the date of the trial court's ruling shall be the date on which the last motion for reconsideration or request for amendment and/or alteration, however denominated, is finally resolved, providing such motion is filed within thirty days after the date the trial court first ruled on the question. A cross-petition for an interlocutory appeal may be filed within thirty days after service of a petition or certification.

D. Form and contents of petition, cross-petition or certification

To the extent possible, the petition, cross-petition or certification seeking interlocutory review or appeal shall comply in form and content with Rule 23(c), Ariz.R.Civ.App.P., 17B A.R.S. In addition, the petition or cross-petition shall contain a concise statement showing why the questions are ripe for interlocutory appeal.

E. Service

The petition, cross-petition or certification shall be served in the same manner as the superior court pleadings in this general adjudication, as follows:

1. A copy of the petition, cross-petition or certification shall be mailed to all parties listed on the trial court's approved mailing list pursuant to Pre-Trial Order No. 1. A copy of the current approved mailing list shall accompany the petition. In addition, a copy of the petition, cross-petition or certification shall be filed in this general adjudication

proceeding. A copy of the petition, cross-petition or certification shall be served on the judge or master who made the ruling in question and on the Arizona Department of Water Resources.

2. The Arizona Department of Water Resources shall promptly serve a copy of the petition, cross-petition or certification on the judge or master and clerk of any other superior court in which a general adjudication is pending, who shall then give appropriate notice of the pendency of such petition to the parties to that adjudication.

F. Response

Within forty-five (45) days after service of a petition, cross-petition or certification, any party to the trial court proceeding may file a response, which shall comply in form and content with section (D) of this order and be served in the same manner as the petition, cross-petition or certification. Parties to other pending general adjudication desiring to participate in an interlocutory appeal shall file a motion for leave to intervene within forty-five (45) days after service of the petition pursuant to subsection (E)(2).

G. Reply

Any party to the proceeding below may reply to any response within thirty (30) days after service thereof. A reply shall be served in the same manner as a petition.

Appendix H

H. Order on petition; service

1. This court may issue its order on the petition, cross-petition, or certification without oral argument. The order shall grant or deny review by interlocutory appeal and specifically list those questions, if any, granted. An order denying a petition or certification or any part thereof shall not have any precedential value.

2. The order granting or denying interlocutory appeal shall be served by the Clerk of the Supreme Court on the trial judge, the master, the petitioner, the cross-petitioner, if any, and all persons listed on the service list accompanying the petition, and shall be filed of record by the Clerk of the Superior Court.

3. An order granting review by interlocutory appeal shall also schedule a pre-submittal conference not sooner than sixty (60) days after the service of the order, as provided below.

4. The Supreme Court may, on its own motion or on motion of the parties, consolidate one or more petitions, cross-petitions, or certifications from the same or different general adjudication proceedings for any or all purposes.

I. Pre-submittal conference

No later than twenty (20) days prior to the scheduled pre-submittal conference, each party desiring to participate in the interlocutory appeal shall file a notice of appearance in the Supreme Court. The trial court shall not be deemed a party to the appeal, nor shall it participate in the appeal in

any respect, even if the appeal is based on its certification. The Supreme Court may designate the parties as appropriate and, in the case of a certification, may align the parties in accord with their true interest in the questions presented. At the presubmittal conference, the Supreme Court shall make orders regarding further briefing and oral argument, if any. It shall also determine what portion of the record will be required to be transmitted, the date of transmittal, the parties to join in the presentation of issues, and other appropriate matters.

J. Standard of review

The standard of review to be applied to any interlocutory appeal under this rule shall be the same standard that would apply had the review been made following a final judgment in the adjudication proceeding.

K. Costs and attorneys' fees

Unless provided by statute, there shall be no application for costs or attorneys' fees made to the Supreme Court in connection with a petition for review by interlocutory appeal or with an interlocutory appeal granted under this rule. However, Rule 25, Ariz.R.Civ.App.P., 17B A.R.S., is fully applicable to pleadings filed pursuant to this order. All other issues of costs and attorneys' fees, if any, shall abide the final resolution of the adjudication.

L. Other procedures

1. Except as otherwise provided herein, the Arizona Rules of Civil Appellate Procedure shall apply to proceedings

under this order. Insofar as may be necessary, the provisions of Rule 5, Ariz.R.P.Spec.Act., 17B A.R.S., concerning stays, *ex parte* orders, restraining orders, and injunctions shall also apply.

2. This order is the exclusive remedy for the presentation of interlocutory issues to this court in this adjudication, including those issues that otherwise might be presented pursuant to the Rules of Procedure for Special Actions.

M. Priority

Insofar as possible, matters in this general adjudication shall be determined in preference to other civil matters.

N. Filing date and extension of time periods

All pleadings in any proceeding under this order shall be deemed filed on the day of mailing if deposited in a United States Post Office or mailbox, addressed to the Clerk of the Supreme Court, within the time allowed for filing. The Court, on its own motion, or by motion of a party with good cause shown, may grant extensions of any of the time limits set out in this order.

COMMENTS

Purpose. The purpose of this order is to establish a procedure for early review of all substantial questions in this general adjudication of water rights. Early appellate review may avoid wasteful trial court proceedings, may result in substantial savings of time or expense, or may for other

reasons be in the interests of justice. The rule is not intended to be used for interlocutory appeal of individualized matters except where such an appeal might result in a ruling of general application that would advance the adjudication process.

Need. Existing procedure allows interlocutory considerations of trial court rulings in certain limited circumstances. Thus, A.R.S. § 12-2101 describes the appellate jurisdiction of the Arizona Court of Appeals with respect to final judgments and certain interlocutory orders. Rule 54, Ariz.R.Civ.P., 16 A.R.S., provides a certification procedure for making certain judgments final that would not otherwise be appealable. The Rules of Procedure for Special Actions permit discretionary review of interlocutory decisions where the decision is arbitrary, capricious, or an abuse of discretion, or where the trial court may be proceeding without, or in excess of, jurisdiction. None of these procedures, however, provides for discretionary appellate jurisdiction of the Supreme Court other than in these limited circumstances.

A general adjudication of water rights filed pursuant to A.R.S. § 45-251 *et seq.* is a lengthy proceeding that requires investment of vast public and private resources. There is a need to provide for discretionary appellate review of interlocutory decisions of the trial court in this proceeding to avoid the waste that might otherwise occur if significant interlocutory decisions were only reviewable after final judgment, which might not be entered for several years.

Appendix H

Jurisdiction and authority. Article 6, § 5 of the Arizona Constitution provides that the Supreme Court shall have:

> 3. Appellate jurisdiction in all actions and proceedings except civil and criminal actions originating in courts not of record, unless the action involves the validity of a tax impost, assessment, toll, statute or municipal ordinance.
>
> 5. Power to make rules relative to all procedural matters in any court.

Rule 19, Arizona Rules of Civil Appellate Procedure, 17B A.R.S., authorizes the Supreme Court to transfer appeals from the Appeals Court on its own motion. The adoption of this special procedural order will effectively transfer all interlocutory appeals under this order to the Supreme Court pursuant to Rule 19(f).

Service. Subsection (D) of the order provides for service of the petition on parties to the adjudication in the same manner as other pleadings are served. In addition, filing the pleading of record in the superior court proceedings will cause the petition to be listed in the clerk's docket summary, which is mailed monthly to subscribers and which is available in the clerk's office for review by any party.

Response/cross-petition. The response provides a party with the opportunity to support the petition or set forth the reasons why the petitions should not be granted. The response may also seek to narrow the scope of the interlocutory appeal if granted or to reformulate the matter for which interlocutory

appeal is sought. The cross-petition may seek to have the court grant an interlocutory appeal of additional related questions if the petition or certification is granted. The cross-petition should make the same showing as required for the petition itself.

Order denying petition. Unless stated to the contrary, an order denying a petition, cross-petition or certification is not intended to indicate that the Supreme Court approves of the trial court's ruling, but only that the Supreme Court has determined that there is an insufficient basis on which to grant review by interlocutory appeal. A subsequent petition, cross-petition or certification seeking interlocutory review or appeal of a ruling for which a previous petition has been denied may be entertained by the court, but only on a showing of a change of circumstances or additional grounds which could not, in the exercise of reasonable diligence, have been known at the time of the previous petition, cross-petition or certification.

Stay. The granting of a petition for an interlocutory appeal shall not stay the proceedings in the superior court unless expressly so ordered by the Supreme Court.

Dated this 26th day of September, 1989.

s/ Stanley G. Feldman
STANLEY G. FELDMAN, VICE CHIEF JUSTICE

APPENDIX I — MINUTE ENTRY OF THE SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY DATED SEPTEMBER 11, 1998

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

No. W-1, W-2, W-3, W-4 (Consolidated)
Contested Case No. W1-203

Clerk of the Court
Form R000A

P. Woods
Deputy

September 11, 1998 HON. SUSAN R. BOLTON

In re the General Adjudication of all Rights to Use Water in the Gila River System and Source

2:05 p.m. This is the time set for a Status Hearing. Present are: Barry Sanders, Bill Staudenmaier, John Hestand, Burt Apker, Kevin Tehan, John Ryley, Lauren Caster, Steve Were, Sheila Schmidt, Bob Hoffman, Carlos Ronstadt, Marilyn Cage, John Schaper, William Sullivan, Rod Lewis, Michael Pearce, Steven Heeley, Jennele O'Hair, Patrick Barry, John Weldon, Alfred Cox, Lee Storey, Sally Worthington, Bill Anger, Anthony Fines, Jim Johnson, Special Master John Thorson, Kathy Dolge, Oscar Garcia and Alma Cano.

Court Reporter Kim Myrick is present.

Appendix 1

AS TO THE GLOBE EQUITY DECREE:

The Court suggested that the parties proceed with a Motion for Summary Judgment to determine if Globe Equity has a preclusive effect on the Gila River Indian Community's claims.

Anthony Fines, representing the Gila Valley Irrigation District/Franklin Irrigation District (GVID/FID), agreed that the matter should proceed on Motion for Summary Judgment. He stated that the Motion for Summary Judgment can proceed on the existing documents. He suggested that the Motion for Summary Judgment be filed by 4-1-99.

John Weldon, representing the Salt River Project claimants, agreed that the matter should proceed on Motion for Summary Judgment.

Patrick Barry, representing the United States, expressed his concern that there are gaps in the historical record. He stated that affidavits documenting the historical record would aid the Court in understanding the decree. He also stated that another alternative would be to wait until the HSR is prepared.

Rod Lewis, representing the Gila River Indian Community, agreed that the matter should proceed on Motion for Summary Judgment. He suggested that the Motion for Summary Judgment be filed by 2-15-99.

The Court reminded the parties to focus exclusively on the preclusive effect of the Globe Equity decree in the Motion

for Summary Judgment. The other decrees and agreements will be addressed at a later time. The parties were directed to refer to the documents as numbered by the Special Master. No previously submitted documents shall be attached to the motions, responses or replies.

IT IS THEREFORE ORDERED that any party who has filed a disclosure and believes that the Globe Equity Decree has a preclusive effect on the Gila River Indian Community's water right claims must file a Motion for Summary Judgment not later than March 1, 1999.

IT IS FURTHER ORDERED that any responses in opposition thereto shall be filed within 60 days thereafter.

IT IS FURTHER ORDERED that any replies shall be filed within 30 days thereafter.

LET THE RECORD REFLECT that the parties are encouraged to attempt to file joint motions and responses to the extent possible.

After discussion with the parties,

IT IS FURTHER ORDERED that the Motion for Summary Judgment be limited to 50 pages; the Response be limited to 50 pages; and, the Reply be limited to 25 pages.

John Ryley, representing the San Carlos, Tonto, Yavapai and Apache Tribes, expressed his concern as to the potential effects on the San Carlos Apache Tribes and whether this matter should be proceeding.

Mr. Barry also expressed his concern that the outcome of the Motion for Summary Judgment may significantly impact the San Carlos Apache Tribes and not just the Gila River Indian Community.

The Court stated that the San Carlos Apache Tribe is not precluded from filing a response. John Schaper, representing the Buckeye Irrigation District, suggested that the parties be able to file a joinder to adopt the position of any party in the motion or response, within 10 days of the filing of the motion or response. The Court agreed that any party may join in a motion or response within 10 days of filing but shall not file any additional statement of facts or memorandum of points and authorities.

AS TO THE PURPOSES OF THE GILA RIVER INDIAN RESERVATION:

The Court noted that this will be a factual matter requiring discovery, expert witnesses and reports.

Mr. Lewis advised the Court that their experts will be finished during the first part of 1999 and are contemplating filing a Motion for Summary Judgment in July of 1999.

Mr. Barry requested that there be a simultaneous exchange of the expert witness reports. He stated that the United States has met its burden by filing the claim and the burden of proof should be upon the opponents to the claim.

Mr. Weldon argued that this is the Gila River Indian Community's claim and the burden of establishing the

purposes of the reservation falls on them. He also expressed his concern that the other decrees and agreements be determined before the parties proceed too far on the purposes.

After discussion with the parties,

IT IS ORDERED that the expert witness reports relating to the purposes of the reservation be prepared and exchanged by April 1, 1999.

IT IS FURTHER ORDERED setting a Status Conference on December 21, 1998 at 2:00 p.m. to discuss further proceedings on the other decrees and agreements, and discovery and hearing dates on the purposes of the reservation.

LET THE RECORD REFLECT that the Court instructed the parties to propose a logical procedure concerning the other decrees and agreements and whether they should proceed simultaneously with the purposes.

Mr. Barry expressed his concern that not all of the disclosures comply with the Order. He then requested 30 days within which to file Motions to Strike certain documents.

IT IS ORDERED granting the parties 30 days to file any Motions to Strike.

ADDITIONAL MATTERS:

Mr. Lewis requested a status report concerning the additional volumes of the preliminary HSR being prepared.

Appendix I

Mike Pearce, representing the Arizona Department of Water Resources (ADWR), stated that the additional chapters are being drafted and will be completed by the end of this year. He will advise the parties on 12-21-98 as to when the chapters will be available.

The Court advised the parties that Mr. Cox has been elected as Chairman of the Steering Committee.

Pursuant to the parties' request,

IT IS ORDERED that James M. Flenner be relieved from serving on the Steering Committee and that William H. Anger be appointed to the Steering Committee.

The Court publicly thanked Special Master John Thorson, Kathy Dolge, Oscar Garcia and Alma Cano for numbering and indexing the set of documents provided by the parties.

3:10 p.m. Court adjourns.

* * *

A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated 1-15-98.

APPENDIX J — MINUTE ENTRY OF THE SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY DATED AUGUST 24, 1999

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

No. W-1, W-2, W-3, W-4 (Consolidated)
Contested Case No. W1-203 & W1-204

Clerk of the Court
Form R000A

P. Woods
Deputy

August 24, 1999 HON. SUSAN R. BOLTON

In re The General Adjudication of all Rights to Use Water in the Gila River System and Source

9:05 a.m. This is the time set for a Status Hearing. Present are: Lauren Caster, Steve Wene, Mary Grier, Riney Salmon, Reed King, Mike Brophy, Cynthia Haglin, Robert Hoffman, John Schaper, Kevin Tehan, John Hestand, Rodney Lewis, Anthony Fines, David Brown, Brad Keogh, Lee Storey, Jan Ronald, Marilyn Cage, William Anger, John Weldon, Byron Lewis, Frederic Beeson, Bill Staudenmaier, Dawn Meidinger, Sally Worthington, Joe Padilla, Robin Fohrenkam, Paul Norman, Irval Mortensen, Gregg Houtz, James Callahan, Patrick Barry, Special Master John Thorson and Kathy Dolge.

Court Reporter Kim Myrick is present.

Appendix J

As to Scheduling Dates for Motions for Summary Judgment Re Preclusive Effect of Globe Equity and Motions for Summary Judgment on Other Agreements and Decrees (Threshold Issues):

The Court advises that the Gila River Indian Community (GRIC), Gila Valley Irrigation District (GVID) and the Franklin Irrigation District's (FID) Joint Motion for a Stay in the Proceedings in W1-203 has been granted in accordance with the parties' request by minute entry dated 8-20-99.

LET THE RECORD REFLECT that the Court notes that it would not be inclined to grant any further continuances unless a settlement is reached.

As to the Status of Settlement Discussions on the Gila River Indian Community Water Rights Claims:

Rodney Lewis, representing the Gila River Indian Community (GRIC), reported that substantial progress has been made. He stated that the agreements between the cities and towns as well as the south-side pumpers are progressing. He also stated that problems still exist with the Upper Gila Valley, Franklin Irrigation District (FID) and the San Carlos Apache Tribe. He further stated that parties are still on track for Senator Kyl's deadline of 9-30-99 for having negotiations completed and the legislation drafted for Congress.

Robert Hoffman, representing Central Arizona Water Conservation District (CAWCD), stated that a drafted stipulation to settle the federal litigation has been negotiated by the parties and he was optimistic about its approval.

John Weldon, representing Salt River Project, stated that major differences of opinions still exist on settlement issues. He stated that numerous issues that were originally unresolved, remain unresolved. For example, he stated that it has not been determined how this settlement will be funded. He stated that federal budget negotiations will have to take place on the appropriation procedure.

As to Notice Issues on the Effect of Globe Equity 59 Decree on Claimants:

The Court advises that it and the Special Master have met with the Arizona Department of Water Resources (ADWR) to discuss ADWR's ability to identify and notice Upper Valley claimants in this matter who are not already represented or who are not presently on the court-approved mailing list. The Court stated that it was determined the current ADWR mailing list is 40 percent inaccurate. The Court further stated that this is not a viable solution in light of the approaching deadlines.

Mr. Anthony Fines, representing the Gila Valley Irrigation District (GVID), stated that he has submitted to ADWR the federal court-approved mailing list for Globe Equity as well as the GVID current member list.

Mr. David Brown, representing the Franklin Irrigation District (FID), stated that he would be providing a list of current members shortly.

Patrick Barry, representing the United States, stated that they are requesting this information in order to formulate

the scope of their Motion for Summary Judgment, not necessarily to require that notice be given to all parties. He stated that they are interested in any claims the members of the district may have previously filed or are currently pending, other than Globe Equity 59 Decree claims.

Jan Ronald, representing ADWR, stated that formulating such a list as requested by Mr. Barry may be possible. Mr. Barry will meet with ADWR to acquire the claimant information.

Special Master John Thorson stated that he is working with ADWR and the Steering Committee to recommend how to resolve the mailing list issue. He stated that he will prepare a draft report on the mailing list issue within the next three weeks.

As to Briefing Schedule Re the Effect of Globe Equity 59 Decree:

Mr. Fines requested the Court to set a briefing schedule on this matter.

After discussion with counsel,

IT IS ORDERED affirming that the parties file their Rule 26.1 Disclosures (as modified in the Court's order for disclosure regarding the Gila River Indian Community) on all Globe Equity 59 Decree preclusion issues on **1-31-2000**.

IT IS FURTHER ORDERED affirming that simultaneous supplemental disclosures shall be filed 45 days thereafter, on **3-16-2000**.

IT IS FURTHER ORDERED setting the deadline for filing the Motions for Summary Judgment Re Effect of Globe Equity 59 Decree on members of the FID, GVID and the San Carlos Apache Tribe on **5-26-2000**.

IT IS FURTHER ORDERED that response and reply times shall be determined under Pretrial Order No. 1 as follows: Responses shall be filed by **7-5-2000**; Replies shall be filed by **7-31-2000**.

As to Status of Updating the San Pedro HSR:

Mr. Barry requested that comments be allowed by the parties after ADWR files its report to the Court on 9-15-99.

IT IS ORDERED granting 30 days for the parties to file their comments on the September report from ADWR.

Re the San Carlos Settlement:

The Court stated that the Special Master's interim report will indicate when the objections are due and a hearing date on any objections to the report will be set by minute entry.

9:50 a.m. Court adjourns.

* * *

Appendix J

A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated 8-9-99. This is also the Court-approved mailing list for W1-203.

Also, a copy of this minute entry is mailed to all parties on the Court-approved W1-204 mailing list dated 8-19-99.

APPENDIX K — RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

USCS Const. Art. IV, § 1

Sec. 1. Full Faith and Credit.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

USCS Const. Amend. 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

USCS Const. Amend. 14, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C.S. § 1738

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Appendix K

43 USCS § 666

§ 666. Suits for adjudication of water rights

(a) Joinder of United States as defendant; costs. Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: Provided, That no judgment for costs shall be entered against the United States in any such suit.

(b) Service of summons. Summons or other process in any such suit shall be served upon the Attorney General or his designated representative.

(c) Joinder in suits involving use of interstate streams by State. Nothing in this section shall be construed as authorizing the joinder of the United

States in any suit or controversy in the Supreme Court of the United States involving the right of States to the use of the water of any interstate stream.

A.R.S. § 45-252 (2006)

§ 45-252. General adjudication; representation; superior court; assignment to judge; petition

A. One or more water users upon a river system and source, the water rights of which have not been previously adjudicated under this article and administered by the director of water resources, or the state of Arizona upon the request of any state agency other than the department of water resources may file a petition to have determined in a general adjudication the nature, extent and relative priority of the water rights of all persons in the river system and source.

B. The attorney general shall represent the state of Arizona in connection with all water claims asserted by this state. The director shall be represented by legal counsel retained in accordance with section 45-104, subsection F.

C. The general adjudication shall be brought and maintained in the superior court in the county in which the largest number of potential claimants resides. The clerk of the court in which the petition is filed shall notify the supreme court and the supreme court shall be responsible for assigning

the general adjudication to a superior court judge and appointing a master and for consolidating the general adjudication with other pending general adjudications, if appropriate.

D. The petition for a general adjudication shall be captioned: "In re the general adjudication of all rights to use water in the _____ river system and source" and shall request that the court determine the nature, extent and relative priority of the water rights of all persons in the river system and source.

APPENDIX L — RESTATEMENT OF THE LAW, SECOND, JUDGMENTS

§ 38 Parties Aligned on the Same Side

Parties who are not adversaries to each other under the pleadings in an action involving them and a third party are bound by and entitled to the benefits of issue preclusion with respect to issues they actually litigate fully and fairly as adversaries to each other and which are essential to the judgment rendered.

* * * *

§ 41 Person Represented by a Party

(1) A person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is:

(a) The trustee of an estate or interest of which the person is a beneficiary; or

(b) Invested by the person with authority to represent him in an action; or

(c) The executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary; or

(d) An official or agency invested by law with authority to represent the person's interests; or

(e) The representative of a class of persons similarly situated, designated as such with the approval of the court, of which the person is a member.

(2) A person represented by a party to an action is bound by the judgment even though the person himself does not have notice of the action, is not served with process, or is not subject to service of process.

Exceptions to this general rule are stated in § 42.

* * * *

§ 42 Exceptions to the General Rule of Representation

(1) A person is not bound by a judgment for or against a party who purports to represent him if:

(a) Notice concerning the representation was required to be given to the represented person, or others who might act to protect his interest, and there was no substantial compliance with the requirement; or

(b) The subject matter of the action was not within the interests of the represented person that the party is responsible for protecting; or

(c) Before rendition of the judgment the party was divested of representative authority with respect to the matters as to which the judgment is subsequently invoked; or

(d) With respect to the representative of a class, there was such a substantial divergence of interest between him and the members of the class, or a group within the class, that he could not fairly represent them with respect to the matters as to which the judgment is subsequently invoked; or

(e) The representative failed to prosecute or defend the action with due diligence and reasonable prudence, and the opposing party was on notice of facts making that failure apparent.

(2) A person who has litigated on his own behalf in a previous action is not bound by or entitled to the benefits of a judgment in a subsequent action concerning the same claim that is brought or defended by a party representing him.

COMMENTS & ILLUSTRATIONS: Comment:

* * *

(f) Representative's inadequate conduct of litigation. The failure of a representative to invoke all possible legal theories or to develop all possible resources of proof does not make his representation legally ineffective, any more than

such circumstances overcome the binding effect of a judgment on a party himself. On the other hand, a fiduciary does not bind those for whom he acts as against third parties who are aware of the fiduciary's failure to fulfill his responsibility. As applied to litigation, this principle implies that a judgment is not binding on the represented person where it is the product of collusion between the representative and the opposing party, or where, to the knowledge of the opposing party, the representative seeks to further his own interest at the expense of the represented person. Where the representative's management of the litigation is so grossly deficient as to be apparent to the opposing party, it likewise creates no justifiable reliance interest in the adjudication on the part of the opposing party. Tactical mistakes or negligence on the part of the representative are not as such sufficient to render the judgment vulnerable. In actions by or against the representative of a class, the thoroughness and vigor of the representation is properly subject to particular scrutiny because the bonds of responsibility between the representative and those for whom he acts are transitory and ordinarily not otherwise readily enforcible. Similar scrutiny is appropriate concerning the adequacy of representation in actions by or against a public agency or official where the judgment would have preclusive effects in an action by citizens or taxpayers concerning the same subject matter. See § 41, Comment d. In any event,

whether the representation has been inadequate is a question of fact to be decided in light of the issues presented in the case and the factual and legal contentions that might reasonably have been expected to be presented.

§ 78 Relief by Motion

Relief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment unless relief may be obtained more fully, conveniently, or appropriately by some other procedure.

* * * *

§ 87 Effect of Federal Court Judgment in a Subsequent Action

Federal law determines the effects under the rules of res judicata of a judgment of a federal court.

* * * *

APPENDIX M — TREATY WITH THE APACHES. JULY 1, 1852

FRANKLIN PIERCE,

PRESIDENT OF THE UNITED STATES OF AMERICA:

To all and singular to whom these presents shall come, greeting:

Whereas a Treaty was made and concluded at Santa Fé, New Mexico, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-two, by and between Col. E. V. Sumner, U. S. A, commanding the 9th Department, and in charge of the Executive Office of New Mexico, and John Greiner, Indian Agent in and for the Territory of New Mexico, and acting Superintendent of Indian Affairs of said Territory, representing the United States, and Cuentas Azules, Blancito, Negrito, Captain Simon, Captain Vuelta, and Mangus Colorado, chiefs, acting on the part of the Apache nation of Indians, situate and living within the limits of the United States, which treaty is in the words following, to wit:

Articles of a Treaty made and entered into at Santa Fé, New Mexico, on the first day of July in the year of our Lord one thousand eight hundred and fifty-two, by and between Col. E. V. Sumner, U. S. A., commanding the 9 Department and in charge of the Executive Office of New Mexico, and John Greiner, Indian Agent in and for the Territory of New Mexico, and acting Superintendent of Indian Affairs of said Territory, representing the United States, and Cuentas, Azules, Blancito, Negrito, Capitan Simon, Capitan Vuelta, and Mangus Colorado, chiefs, acting on the part of the Apache Nation of Indians, situate and living within the limits of the United States.

Appendix M

Article 1. Said nation or tribe of Indians through their authorized Chiefs aforesaid do hereby acknowledge and declare that they are lawfully and exclusively under the laws, jurisdiction, and government of the United States of America, and to its power and authority they do hereby submit.

Article 2. From and after the signing of this Treaty hostilities between the contracting parties shall forever cease, and perpetual peace and amity shall forever exist between said Indians and the government and people of the United States; the said nation, or tribe of Indians, hereby binding themselves most solemnly never to associate with or give countenance or aid to any tribe or band of Indians, or other persons or powers, who may be at any time at war or enmity with the government or people of said United States.

Article 3. Said nation, or tribe of Indians, do hereby bind themselves for all future time to treat honestly and humanely all citizens of the United States, with whom they may have intercourse, as well as all persons and powers, at peace with the said United States, who may be lawfully among them, or with whom they may have any lawful intercourse.

Article 4. All said nation, or tribe of Indians, hereby bind themselves to refer all cases of aggression against themselves or their property and territory, to the government of the United States for adjustment, and to conform in all things to the laws, rules, and regulations of said government in regard to the Indian tribes.

Article 5. Said nation, or tribe of Indians, do hereby bind themselves for all future time to desist and refrain from

making any "incursions within the Territory of Mexico" of a hostile or predatory character; and that they will for the future refrain from taking and conveying into captivity any of the people or citizens of Mexico, or the animals or property of the people or government of Mexico; and that they will, as soon as possible after the signing of this treaty, surrender to their agent all captives now in their possession.

Article 6. Should any citizen of the United States, or other person or persons subject to the laws of the United States, murder, rob, or otherwise maltreat any Apache Indian or Indians, he or they shall be arrested and tried, and upon conviction, shall be subject to all the penalties provided by law for the protection of the persons and property of the people of the said States.

Article 7. The people of the United States of America shall have free and safe passage through the territory of the aforesaid Indians, under such rules and regulations as may be adopted by authority of the said States.

Article 8. In order to preserve tranquillity and to afford protection to all the people and interests of the contracting parties, the government of the United States of America will establish such military posts and agencies, and authorize such trading houses at such times and places as the said government may designate.

Article 9. Relying confidently upon the justice and the liberality of the aforesaid government, and anxious to remove every possible cause that might disturb their peace and quiet, it is agreed by the aforesaid Apache's that the government of

the United States shall at its earliest convenience designate, settle, and adjust their territorial boundaries, and pass and execute in their territory such laws as may be deemed conducive to the prosperity and happiness of said Indians.

Article 10. For and in consideration of the faithful performance of all the stipulations herein contained, by the said Apache's Indians, the government of the United States will grant to said Indians such dona-tions, presents, and implements, and adopt such other liberal and humane measures as said government may deem meet and proper.

Article 11. This Treaty shall be binding upon the contracting parties from and after the signing of the same, subject only to such modifications and amendments as may be adopted by the government of the United States; and, finally, this treaty is to receive a liberal construction, at all times and in all places, to the end that the said Apache Indians shall not be held responsible for the conduct of others, and that the go-vernment of the United States shall so legislate and act as to secure the permanent prosperity and happiness of said Indians.

In faith whereof we the undersigned have signed this Treaty, and af-fixed thereunto our seals, at the City of Santa Fé, this the first day of July in the year of our Lord one thousand eight hundred and fifty-two.

Appendix M

Witnesses:
F.A. Cunningham,
Paymaster, U.S.A.

J.C. McFerran,
1st Lt. 3d Inf. Act. Ast. Adj. Gen.
Caleb Sherman.
Fred Saynton.
Chas. McDougall,
Surgeon, U.S.A.
S.M. Baird,
Witness to the signing of Mangus Colorado.
John Pope,
Bvt. Capt. T.E.

E.V. Sumner, [Seal]
Bvt. Col. U.S.A. con'g 9th Dept. In charge of Executive Office of New Mexico.
John Greiner, [Seal]
Act. Supt. Indian Affairs, New Mexico.
Capitan Vuelta, his x mark [Seal]
Cuentas Azules, his x mark [Seal]
Blancito ——, his x mark [Seal]
Negrito ——, his x mark [Seal]
Capitan Simon, his x mark [Seal]
Mangus Colorado, his x mark [Seal]

And whereas the said Treaty having been submitted to the Senate of the United States, for its constitutional action thereon, the Senate did, on the twenty-third day of March, one thousand eight hundred and fifty-three, advise and consent to the ratification of its articles, by a resolution in the words and figures following, to wit:

Appendix M

In Executive Session, Senate of the United States,

March 23d, 1858.

Resolved, (two thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the Articles of a Treaty made and entered into at Santa Fé New Mexico, on the first day of July, in the year of our Lord, 1852, by and between Colonel E. V. Sumner, United States Army, commanding the 9th Department, and in charge of the Executive Office of New Mexico, and John Greiner, Indian Agent in and for the Territory of New Mexico and acting Superintendent of Indian Affairs of said Territory, representing the United States, and Cuentas Azules, Blancito, Negrito, Capitan Simon, Capitan Vuelta, and Mangus Colorado, chiefs, acting on the part of the Apache nation of Indians, situate and living within the limits of the United States.

Attest — Asbury Dickens, *Secretary.*

Now, therefore, be it known, that I, FRANKLIN PIERCE, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the twenty-third day of March, one thousand eight hundred and fifty-three, accept, ratify, and confirm the said treaty.

In testimony whereof, I have caused the seal of the United States to be herewith affixed, having signed the same with my hand.

Appendix M

Done at the city of Washington, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-seventh.

FRANKLIN PIERCE.

By the President:

W. L. Marcy, *Secretary of State.*

APPENDIX N — EXCERPTS OF OPENING BRIEF FOR UNITED STATES

No. WC-02-0003-IR

IN THE SUPREME COURT
FOR THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER
IN THE GILA RIVER SYSTEM AND SOURCE

Maricopa County Nos. W-1, W-2, W-3, W-4
(Consolidated)

[Contested Case No. W1-206]

OPENING BRIEF FOR THE UNITED STATES

KELLY A. JOHNSON
Acting Assistant Attorney General
PATRICK BARRY (006056)
JOHN L. SMELTZER
Attorneys, Department of Justice
Environment & Natural Resources Division
Post Office Box 23975
Washington, D.C. 20026-3795
(202) 305-0343

On the other hand, as also explained *supra*, the Superior Court did not in any way address the Apaches' argument under Section 42(1)(e).[35] In particular, the Superior Court did not determine whether the exception applies in cases involving tribal representation by the United States,[36] what sort of showing is necessary to establish the exception, or whether there is a sufficient factual basis to establish the exception in this case. In these circumstances, we agree with the Apaches that a remand for further proceedings would be

---

35. The Superior Court did not address any Apache-specific issues in its summary disposition in W1-206 and did not address Section 42(1)(e), as a matter of law, in its memorandum ruling in W1-203, as GRIC did not argue inadequate representation.

36. In *Truckee-Carson*, the Ninth Circuit determined that the Pyramid Lake Paiute Tribe could assert such an exception to *res judicata*, but rejected the exception on the facts. *See* 649 F.2d at 1307-8. There, the trial court had found, among other things, that "any impropriety in the government's representation 'was unknown to the defendants in Orr Ditch.'" *Id.* at 1308. After stating that this finding was not "clearly erroneous," the Ninth Circuit held that an essential element of the Section 42(1)(e) exception was not established. *Ibid.* On *certiorari*, the Supreme Court rejected a somewhat similar argument raised by the Pyramid Lake Paiute Tribe under Section 42(1)(d) of the Restatement (Second) of Judgments, which establishes an exception to claim preclusion in cases of conflict of interest. *See Nevada*, 463 U.S. at 135, n. 15. However, the Supreme Court did not address the "quality of representation the Tribe received." *See id.* at 135, n. 14. Nor did the Court expressly address Section 42(1)(e). *But see id.* at 144, n. 16 (stating, without citation, that if the government "violated its obligations to the Tribe, then the Tribe's remedy is against the Government, not against third parties").

appropriate. Among other things, to determine whether the United States exercised "due diligence and reasonable prudence" in prosecuting the Globe Equity Decree on behalf of the Apaches or whether the Globe Equity defendants were aware of any representational failures on the part of the United States, a court would have to "weigh the quality" of reams of documentary evidence presented by the parties and "choose among competing or conflicting inferences" to be drawn from this evidence. *See Orme School*, 166 Ariz. at 311, 802 P.2d at 1010. This Court should not engage in such factual determinations in this appeal. Rather, these are matters for the trial court to decide, in the first instance, following an evidentiary hearing, and not on summary judgment. *Ibid.*

In short, this Court should remand the matters pertaining to the Apaches' argument under Section 42(1)(e) to the Superior Court, after resolving the other issues in this appeal. The United States reserves the right to offer a factual rebuttal, as appropriate, in any future proceedings on remand or otherwise.

IV. *Re Issue Four:* THE UNITED STATES WAS AUTHORIZED TO REPRESENT THE APACHES IN THE GLOBE EQUITY PROCEEDINGS

The United States also opposes the Apaches' argument *(Brief* at 68-71) that the United States lacked authority to litigate the Apaches' federally reserved water rights or enter the Globe Equity Decree on the Apaches' behalf. In 1893, Congress enacted legislation providing that:

* * * *

APPENDIX O — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED JULY 10, 1990 AND FILED JULY 16, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GLOBE EQUITY NO. 59 (JCC)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

vs.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

ORDER

Hearing on Pending Motions:

Counsel state their appearance for the Court (see attached sign in sheet) and make statements to the Court. Attorney Anthony Fines withdraws his objection to Count I on the Motion For Intervention.

Appendix O

The Court rules as follows on the Gila Indian Community's Motion To Clarify Findings of Fact and Conclusions of Law:

Conclusion #23 — DENIED

Conclusions #39-42 — DENIED

Conclusion #41 — DENIED

Conclusion #46 — GRANTED

Conclusion #1 — DENIED

Conclusion #12 — DENIED with the understanding that the question may be litigated.

Conclusion #47 — Should read: "He uses a factor of .7, assuming that this 70% will represent evaporation from the lake. This results in inches of evaporation."

IT IS ORDERED:

The Motion To Dismiss Count VIII of the Amended Complaint in Intervention is DENIED;

The Motion To Stay Count VIII is GRANTED;

The Motion To File an Amicus Brief is GRANTED;

Upper Valley Defendants' Motion To Dismiss Count VIII or conduct separate trials is DENIED AS MOOT;

Upper Valley's Motion To Dismiss Count IX is DENIED.

Appendix O

IT IS FURTHER ORDERED that Plaintiff is to amend the statements of it's claim specifically setting forth the claim being made, within NINETY (90) DAYS from the date of this Order. After Count IX is amended, Upper Valley Defendants are to prepare a Notice to the Defendants stating the Court's disposition of Count VIII, and further stating that there will be no class representation as to that Count.

San Carlos Apache Tribe's Motion For Intervention is GRANTED on all Counts; and is STAYED as to Count VI.

Attorney Cox's Motion To Serve Notice of the Amended Claim on parties who have already answered in this matter is DENIED; Attorney Cox must reply to Counterclaimant or move to dismiss against Counterclaimant with THIRTY (30) DAYS of the date of this Order.

IT IS FURTHER ORDERED that all discovery is stayed until Count IX is reinstated.

IT IS FURTHER ORDERED that the Court approves the expert fees incurred by Ms. Winkelman at the rate of $20.00 per hour for 23 hours.

IT IS FURTHER ORDERED that this matter is set for trial on MAY 13, 1991, (estimated time of trial is 2 weeks) regarding issues relating to Upper Valley and all counterclaims.

DATED this 10 day of July, 1990.

s/ John C. Coughenour
John C. Coughenour
UNITED STATES DISTRICT JUDGE

APPENDIX P — MINUTE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED AUGUST 7, 1990 AND FILED AUGUST 14, 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CASE NO. Globe Equity No. 59

UNITED STATES OF AMERICA,

Plaintiff,

v.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Hon. John C. Coughenour, U. S. District Judge:

The United States' motion for clarification is GRANTED. The stay granted regarding the plaintiffs in intervention count VIII of the amended complaint is extended to the analogous groundwater pumping claim brought by the United States.

Filed and entered this 7th day of August, 1990.

BRUCE RIFKIN, Clerk
by s/ Julie Mahnke
Deputy Clerk

APPENDIX Q — ORDER ON MOTION TO REVERSE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED OCTOBER 19, 1990 AND FILED OCTOBER 24, 1990

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

GLOBE EQUITY NO. 59 (JCC)

UNITED STATES OF AMERICA,

Plaintiff,

and

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

and

SAN CARLOS APACHE TRIBE,

Plaintiff in Intervention,

v.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

Appendix Q

ORDER ON MOTION TO REVERSE

The San Carlos Apache Tribe's Motion to Reverse the Court's "Colorado River" Stay Order of Count VI of its Complaint in Intervention is **DENIED**.

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this 19 day of October, 1990.

s/ John C. Coughenour
John C. Coughenour
United States District Judge

APPENDIX R — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED MAY 10, 1999 AND FILED MAY 13, 1999

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CASE NO. Globe Equity No. 59

UNITED STATES OF AMERICA,

Plaintiff,

and

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

and

SAN CARLOS APACHE TRIBE,

Plaintiff in Intervention,

v.

GILA VALLEY IRRIGATION DISTRICT, et, al.,

Defendants.

ORDER

The San Carlos Apache Tribe has filed a complaint against the parties operating the San Carlos Reservoir asserting claims under the Endangered Species Act, the Native American Graves Protection and Repatriation Act,

and common law nuisance. The complaint does not state a claim based on water rights granted by the Gila River Decree. The Court, therefore, declines its jurisdiction to hear this matter under Globe Equity No. 59 and dismisses the complaint without prejudice. If it appears that the Decree may need to be modified based on the resolution of these claims by another court, the parties may petition this Court at that time.

SO ORDERED, this 10 day of May, 1999.

s/ [illegible]
UNITED STATES DISTRICT JUDGE

APPENDIX S — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DENYING MOTION TO RECONSIDER DATED AND FILED JULY 16, 1990

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

(CIVIL MINUTES-GENERAL)

Civil Case No. E59 - GLOBE EQUITY (JCC)

Date: July 16, 1990

HONORABLE JOHN C. COUGHENOUR

IT IS ORDERED that the United States' motion to reconsider or to certify under Rule 54(b) is DENIED.

APPENDIX T — MINUTE ORDER OF THE UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA DATED AUGUST 7, 1990 AND FILED AUGUST 14, 1990

CASE NO. Globe Equity No. 59

UNITED STATES OF AMERICA,

Plaintiff,

v.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

The following Minute Order is made by direction of the Court, the Hon. John C. Coughenour, U. S. District Judge:

The United States' motion for clarification is GRANTED. The stay granted regarding the plaintiffs in intervention count VIII of the amended complaint is extended to the analogous groundwater pumping claim brought by the United States.

Filed and entered this 7th day of August, 1990.

BRUCE RIFKIN, Clerk

by s/ Julie Mah[illegible]
Deputy Clerk

APPENDIX U — CIVIL MINUTES — GENERAL OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED AND FILED JULY 16, 1990

UNITED STATES DISTRICT OF ARIZONA

(CIVIL MINUTES-GENERAL)

Civil Case No. E59 - GLOBE EQUITY (JCC) Date: July 16, 1990

HONORABLE JOHN C. COUGHENOUR

IT IS ORDERED that the United States' motion to reconsider or to certify under Rule 54(b) is DENIED.

APPENDIX V — ORDER OF THE HONORABLE JOHN C. COUGHENOUR OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED JULY 10, 1990 AND FILED JULY 16, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GLOBE EQUITY NO. 59 (JCC)

ORDER

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

vs.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

Hearing on Pending Motions:

Counsel state their appearance for the Court (see attached sign in sheet) and make statements to the Court. Attorney Anthony Fines withdraws his objection to Count I on the Motion For Intervention.

Appendix V

The Court rules as follows on the Gila Indian Community's Motion To Clarify Findings of Fact and Conclusions of Law:

Conclusion #23 - DENIED

Conclusions #39-42 - DENIED

Conclusion #41 - DENIED

Conclusion #46 - GRANTED

Conclusion #1 - DENIED

Conclusion #12 - DENIED with the understanding that the question may be litigated.

Conclusion #47 - Should read: "He uses a factor of .7, assuming that this 70% will represent evaporation from the lake. This results in inches of evaporation."

IT IS ORDERED:

The Motion To Dismiss Count VIII of the Amended Complaint in Intervention is DENIED;

The Motion To Stay Count VIII is GRANTED;

The Motion To File an Amicus Brief is GRANTED;

Appendix V

Upper Valley Defendants' Motion To Dismiss Count VIII or conduct separate trials is DENIED AS MOOT;

Upper Valley's Motion To Dismiss Count IX is DENIED.

IT IS FURTHER ORDERED that Plaintiff is to amend the statements of it's claim specifically setting forth the claim being made, within NINETY (90) DAYS from the date of this Order. After Count IX is amended, Upper Valley Defendants are to prepare a Notice to the Defendants stating the Court's disposition of Count VIII, and further stating that there will be no class representation as to that Count.

San Carlos Apache Tribe's Motion For Intervention is GRANTED on all Counts; and is STAYED as to Count VI.

Attorney Cox's Motion To Serve Notice of the Amended Claim on parties who have already answered in this matter is DENIED; Attorney Cox must reply to Counterclaimant or move to dismiss against Counterclaimant with THIRTY (30) DAYS of the date of this Order.

IT IS FURTHER ORDERED that all discovery is stayed until Count IX is reinstated.

IT IS FURTHER ORDERED that the Court approves the expert fees incurred by Ms. Winkelman at the rate of $20.00 per hour for 23 hours.

Appendix V

IT IS FURTHER ORDERED that this matter is set for trial on MAY 13, 1991, (estimated time of trial is 2 weeks) regarding issues relating to Upper Valley and all counterclaims.

DATED this 10 day of July, 1990.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

APPENDIX W — ORDER ON MOTION TO REVERSE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED OCTOBER 19, 1990 AND FILED OCTOBER 22, 1990

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

GLOBE EQUITY NO. 59 (JCC)

ORDER ON MOTION TO REVERSE

UNITED STATES OF AMERICA,

Plaintiff,

and

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

and

SAN CARLOS APACHE TRIBE,

Plaintiff in Intervention,

v.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

Appendix W

The San Carlos Apache Tribe's Motion to Reverse the Court's "Colorado River" Stay Order of Count VI of its Complaint in Intervention is **DENIED.**

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this 19 day of October, 1990.

s/ John C. Coughenour
John C. Coughenour
United States District Judge

APPENDIX X — ORDER OF THE UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA DATED MAY 10, 1999 AND FILED MAY 13, 1999

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CASE NO. Globe Equity No. 59

ORDER

UNITED STATES OF AMERICA,

Plaintiff,

and

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

and

SAN CARLOS APACHE TRIBE,

Plaintiff in Intervention,

v.

GILA VALLEY IRRIGATION DISTRICT, et, al.,

Defendants.

Appendix X

The San Carlos Apache Tribe has filed a complaint against the parties operating the San Carlos Reservoir asserting claims under the Endangered Species Act, the Native American Graves Protection and Repatriation Act, and common law nuisance. The complaint does not state a claim based on water rights granted by the Gila River Decree. The Court, therefore, declines its jurisdiction to hear this matter under Globe Equity No. 59 and dismisses the complaint without prejudice. If it appears that the Decree may need to be modified based on the resolution of these claims by another court, the parties may petition this Court at that time.

SO ORDERED, this 10 day of May, 1999.

s/ John C. Coughenour
UNITED STATES DISTRICT JUDGE

ORDER — 1

APPENDIX Y — EXCERPT FROM STATEMENT OF POSITION OF ARIZONA IN THE SUPREME COURT OF THE UNITED STATES

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1955

NO. 10 ORIGINAL

STATEMENT
OF POSITION OF ARIZONA

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

STATES OF NEW MEXICO AND UTAH,

Impleaded.

Appendix Y

STATEMENT OF POSITION OF ARIZONA

JOHN H. MOEUR,
Chief Counsel

Arizona Interstate Stream
Commission

JOHN P. FRANK
JOHN GEOFFREY WILL
BURR SUTTER
PERRY LING

THEODORE KIENDL
For the Arizona Interstate
Stream Commission

ROBERT MORRISON,
Attorney General of Arizona

[Commencing at page 4]

* * *

A. Affirmative Issues Raised by Arizona.

(1) The first issue raised by Arizona in its Complaint arises out of that provision of the California Limitation Act which limits California to 4.4 m.a.f. "of the waters apportioned to the Lower Basin States by paragraph (a) of Article III of the Compact plus not more than one-half of any excess or surplus waters unapportioned by said Compact". If the III(b) water is "excess or surplus waters

unapportioned" then California is entitled to claim up to one-half of that amount.[3] Otherwise they are barred altogether from the III(b) water.

The question therefore simmers down to whether III(b) water is or is not "excess or surplus waters unapportioned". The short answer for this immediate purpose is that Mr. Justice Brandeis in *Arizona v. California*, 292 U.S. 341 at pp. 357-359 [5] (1934), repeatedly describes the III(b) water as "apportioned". Nevada, New Mexico and Utah agree that III (b) waters are "apportioned".

(2) The second central issue is the method of measurement to be applied to the internal waters of Arizona, notably the Gila. We remind the Master of our basic formula — our 3.8 m.a.f. is made up of 2.8 m.a.f. contract main stream water and 1.0 m.a.f. internal non-contract water. If the 1.0 m.a.f. is increased (California says it should be 2.0 m.a.f.) our 2.8 m.a.f. would be correspondingly reduced; if our method of measure is used, we are safely within our formula.

Without question, Arizona achieves use (to be distinguished from "beneficial consumptive use") of Gila River System water in excess of 1,000,000 acre feet a year. Its uses add up to far more water than the Gila would ever contribute to the Colorado River itself under natural conditions. Indeed, by marvels of ingenuity, it uses from the Gila more water than there is in the river, measured at any point. This is achieved by two devices: First, the works in the higher reaches of the Gila River System conserve water

3. Please note that the exception would permit them to claim up to that amount, not receive that amount.

which would otherwise be wasted by evaporation, transpiration or channel losses — this is what is called "salvage". Second, the processes of irrigation not merely take water from the river but also let water come back to the river and this water in turn is taken out again and again before the last use has been made. The familiar phrase of the Chicago meatpackers is: "We use all the pig but the squeal." To mix the metaphor, Arizona uses all the water including the squeal and then uses the squeal twice.

This puts the legal issue of the definition of "beneficial consumptive use", the term applicable to measuring the water use of each state. Arizona contends that the measure is in terms of main stream depletion — i.e., that it "beneficially uses" only the amount which it takes that would otherwise have reached the Colorado. California contends that the measure is actual diversions.

* * * *

Filed:
8/1/2006

(9)

No. 06- 173

IN THE

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

SUPPLEMENTAL APPENDIX

JOE P. SPARKS
Counsel of Record
SUSAN B. MONTGOMERY
ROBYN L. INTERPRETER
SPARKS, TEHAN & RYLEY, P.C.
7503 First Street
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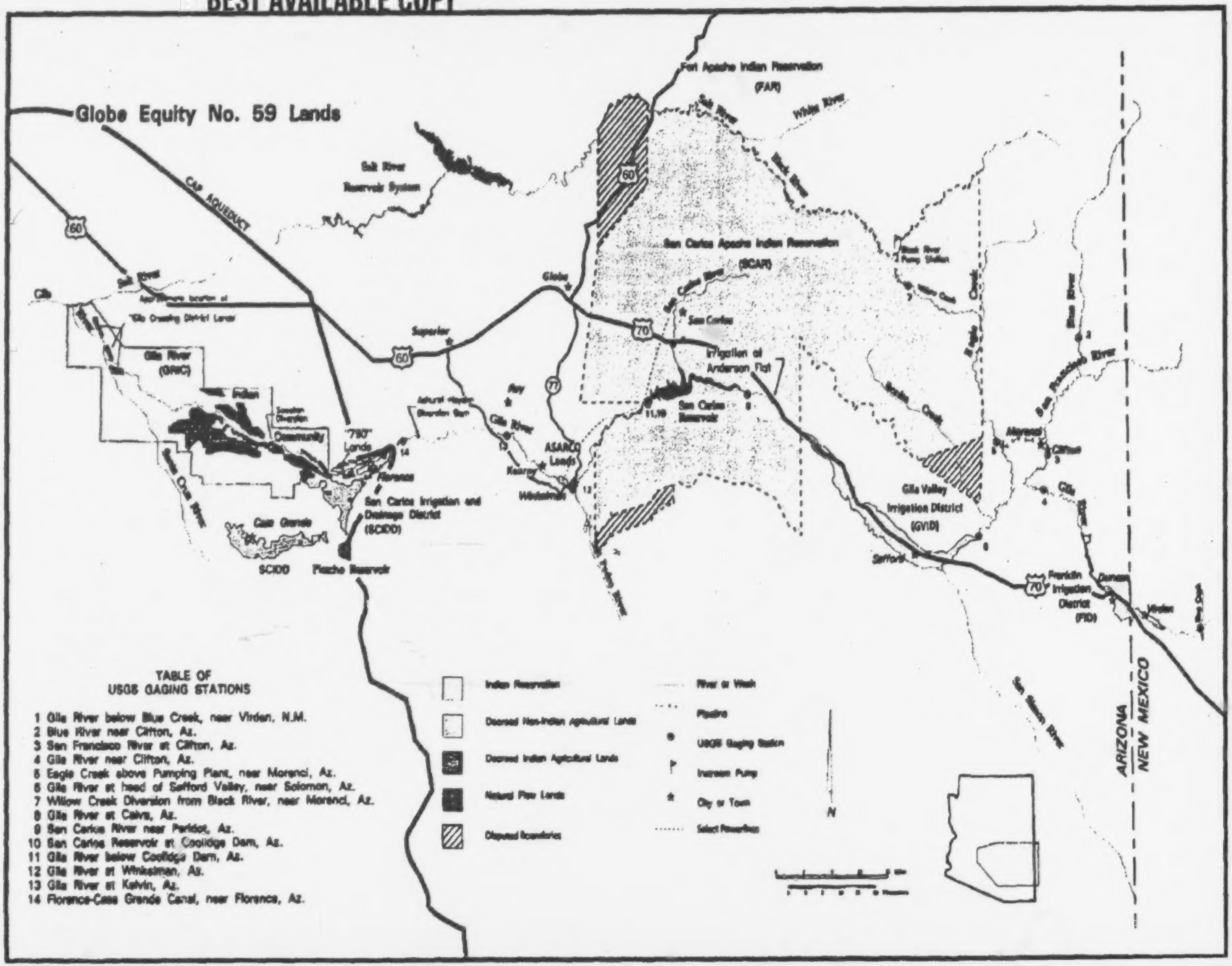

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.	Supreme Court No. WC-02-0003-IR Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated) [Contested Case No. W1-206]

THE SAN CARLOS APACHE TRIBE'S MOTION FOR RECONSIDERATION

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FILED
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NOEL K. DESSAINT
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BY

The San Carlos Apache Tribe ("Apache Tribe" or "Tribe") moves the Court, pursuant to Rule 22 of the Arizona Rules of Civil Appellate Procedure, to reconsider its February 9, 2006, Order and Decision ("Decision"), that the doctrine of comity compels the Court to refrain from addressing the merits of the Tribe's arguments under Issue Three of the Tribe's Interlocutory Appeal.[1]

As explained below, the doctrine of comity cannot preclude the Tribe as a matter of law from arguing in the General Adjudication that the affirmative defense of res judicata is not a bar to the Tribe's claims to the mainstem of the Gila River, where the proponents of this defense have failed to meet their burden to demonstrate the existence of "privity" between the United States and the Tribe, due to the United States' grossly inadequate representation of the Tribe during the *Globe Equity* proceedings.

Reconsideration is also appropriate because the issue of comity was not argued below, was not raised on appeal, and was not briefed by the parties in this proceeding or raised in oral argument by the Court.

This motion is based upon the following Memorandum of Points and Authorities.

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[1]*See* Decision at 42.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

The Court accepted jurisdiction over the Tribe's interlocutory appeal, including Issue Three, which states:

> Did the Trial Court err when it denied the Apache Tribe's request for an evidentiary hearing on the adequacy of the representation of the United States as its Trustee under § 42(1)(e) of the *Restatement (Second) of Judgments*[,] and ruled that res judicata applies to the Apache Tribe under [the] Decree. [Decision at p. 9, fn. 5].

By accepting this issue, the Court decided to exercise its jurisdiction to determine whether or not the affirmative defense of res judicata bars any additional claims to the mainstem of the Gila River made by parties to the *Globe Equity No. 59 Decree* ("*Decree*"), including those claims made by the United States for the Apache Tribe. However, the Court then declined to exercise the full measure of the Court's jurisdiction to determine whether or not all elements of res judicata were actually met in this case, ruling instead that the doctrine of comity precluded the Tribe from exercising a legal defense in the Adjudication to an assertion of res judicata by the parties against the Tribe's claims for additional water rights to the mainstem.[2]

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[2]Decision at 55.

By focusing on comity, the Court avoided the very heart of the Tribe's argument in Issue Three, namely, whether privity (a fundamental element of res judicata) in fact existed between the United States and the Tribe at the time the *Decree* was entered. The Tribe requests that the Court reconsider this ruling.[3]

The Tribe's defense to the application of res judicata based upon the "inadequate representation" of the United States in *Globe Equity* is founded upon sound legal authority under federal law, including considerations of due process under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.[4] The defense of inadequate representation is set forth in § 42(1)(e) of the *Restatement (Second) of Judgments*, which provides that a person is not bound by a judgment where a representative party "failed to prosecute the action with due diligence and reasonable prudence, and the opposing party was on

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[3]The Court's focus on comity also avoids the Tribe's arguments raised in Issue Two of its Petition, that the Tribe directed the Superior Court to substantial disputed material facts which, if viewed in the light most favorable to the Tribe as the non-moving party, prove that the Tribe was inadequately represented in *Globe Equity* by the United States, resulting in a lack of privity. Under Ariz. R. Civ. P. 56, those asserting the *Decree* as preclusive against the Tribe's claims to the Gila River had the burden to demonstrate the **absence** of disputed material facts as to **each element** of the affirmative defense of res judicata. *See generally Scopellite v. Needham*, 122 Ariz. 515, 516, 596 P.2d 41 (App. 1979); *National Hous. Indus. v. E. L. Jones Dev. Co.*, 118 Ariz. 374, 377, 576 P.2d 1374 (App. 1978). The Tribe is entitled to a trial on the merits as to this Issue.

[4]*U. S. v. Truckee-Carson Irrigation District*, 649 F.2d at 1306, 1307, n.18.

notice of facts making that failure apparent." *See also Comment f* to § 42(1)(e) of the *Restatement (Second) of Judgments.*

Where the Tribe demonstrates as a matter of fact the existence of such grossly inadequate and deficient representation by the United States, the element of privity cannot be established because such inadequate representation constitutes a violation of constitutional due process. *See id.* The Court refrained from addressing this fundamental question of constitutional law, ruling instead that the doctrine of comity required the Tribe to make this argument to the *Globe Equity* Court.

The Court's refusal to address the Apache Tribe's defense to the application of res judicata in this proceeding compounds the violation of constitutional due process visited upon the Tribe as a result of the United States' inadequate representation in *Globe Equity*. If not corrected, this Court's Decision would deny the Tribe an opportunity to pursue and defend these very same claims in the Adjudication today, once again depriving the Tribe of its due process rights to adjudicate its aboriginal and federal reserved water rights to the mainstem of the Gila River, thus compounding a due process violation upon a due process violation.

B. The Doctrine of Comity

The Court held that under the doctrine of comity, the Tribe could not present its defense to the application of res judicata in the Adjudication Court (where the affirmative defense of res judicata was raised), but rather was required to file either a motion in the federal *Globe Equity* court under Rule 60(b) of the Federal Rules of Civil Procedure, or to file an independent action in the *Globe Equity* court to "modify" the *Decree*.[5]

The Apache Tribe does not disagree with the Court's recitation of the judicial doctrine of comity in general, or the standards applicable for obtaining relief under Rule 60(b) or for the modification of consent decrees, as discussed in the cases cited by the Court, such as in *Lapin v. Shulton*, 333 F.2d 169 (9th Cir. 1964) or *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992). However, the judicial doctrine of comity is simply without application to the inadequate representation defense raised by the Tribe this case.

The Tribe has not asserted in the Adjudication that the *Decree* should be modified or re-opened due to a fraud upon the court, equitable principles or because of changed facts or circumstances arising since 1935, thereby possibly triggering the requirements of 60(b). The Tribe is asserting a defense based

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[5] *See* Decision at pp. 42-49.

upon § 42(1)(e) of the *Restatement (Second) of Judgments* to the affirmative defense of res judicata, which was made by the Tribe's opponents on summary judgment in the Adjudication in an attempt to bar the Tribe's claims to the mainstem of the Gila River.[6]

The judicial doctrine of comity should not be used to bar the Tribe from raising the defense to res judicata in this proceeding and from proving that the Tribe was so grossly and inadequately represented in *Globe Equity* as to destroy any vestige of privity between the Tribe and the United States, in violation of the Tribe's constitutional rights to due process.

The Court looks to the *Restatement (Second) Judgments*, § 78, in support of its discussion on comity, which provides:[7]

> Relief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment **unless relief may be obtained more fully, conveniently, or appropriately by**

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[6]ASARCO argued that the Tribe was required to seek relief under its inadequate representation argument under Issue Three, by filing a Rule 60(b)(3) motion in the *Globe Equity* court, alleging that a fraud had been committed upon the Court because the relief sought by the Tribe under Issue Three was substantially the same as fraud. The inadequate representation argument under Issue Three is not the same as fraud being committed upon the *Globe Equity* court. Similarly, seeking any other kind of equitable relief under Rule 60(b) in the *Globe Equity* court is not the same as seeking relief from the application of res judicata in the Adjudication. *See* Tribe's Reply Brief at 66-69.

[7]*See* Decision at 44.

some other procedure. [Emphasis added].

While *Comment a* to § 78 discusses the use of a Rule 60(b) motion filed in the court that rendered a judgment as a means to obtain relief from that judgment, it also clearly distinguishes the situation which is presented in this case by the Apache Tribe, that is, where the only "attack" being made on the judgment or *Decree* is "made defensively when the judgment in question is relied upon by an opposing party in the course of a subsequent action." *Id.*

Thus, in this subsequent action in Adjudication Court, where the opposing parties are relying upon the *Decree* to preclude the Tribe's claims to the mainstem under the doctrine of res judicata, the Tribe is entitled under § 78 of the *Restatement* to challenge the res judicata impacts of the *Decree* on the Tribe's claims to the mainstem of the Gila River due to a lack of privity between the Tribe and the United States. The Tribe is not required to file a Rule 60(b) motion in the *Globe Equity* court, as is suggested in the Decision, but can assert its defense to the application of the *Decree* in this Adjudication.[8]

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[8] *See also Federal Practice and Procedure*, Wright, Miller & Cooper (2002), § 4405, Vol.18, p. 82 ("Ordinarily both issue preclusion and claim preclusion are enforced by awaiting a second action in which they are pleaded and proved by the party asserting them. The first court does not get to dictate to other courts the preclusive consequences of its own judgment . . . .").

C. The McCarran Amendment Does Not Permit the *Globe Equity* Court to Examine Whether the *Decree* Precludes the Tribe from Making Claims to the Mainstem of the Gila River Under the Doctrine of Res Judicata

The Court presumed that the reason the Tribe did not seek to intervene in *Globe Equity* in 1990 to "vacate the *Decree* or re-litigate the issues" was because "the district court had already intimated its view of a tribe's ability to challenge both the validity of the *Decree* and the adequacy of the United States' representation in the *Globe Equity* litigation." Decision at 47. The Court misunderstands the history of this case.[9]

In 1979, the Tribe filed an original action in the United States Federal District Court for the District of Arizona, seeking the adjudication of its federal reserved and aboriginal water rights claims. *See San Carlos Apache Tribe of Arizona v. State of Arizona, et. al.*, CIV 79-186 PHX-PGR. However, the federal district court subsequently stayed its proceedings in light of the United States Supreme Court ruling in *Arizona, et al. v. San Carlos Apache Tribe*, 463

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[9]The Court *sua sponte* embarked on analysis of Issue Three based upon the effect of the judicial doctrine of comity and suggested forum shopping on the part of the Apache Tribe. These arguments were not presented to the Court either by means of cross-petition or through legal argument in briefing before the Court, or in oral argument. Accordingly, the Apache Tribe was unable to illuminate for the Court the legal basis and history behind the Apache Tribe's and United States' filing of water rights claims to the mainstem of the Gila River in this Adjudication.

U.S. 545; 103 S. Ct. 3201 (1983) ("*Arizona v. San Carlos*"). *See San Carlos Apache Tribe of Arizona et al. v. State of Arizona et al.*, 721 F.2d 1187 (9th Cir. 1983) (relying on *Arizona v. San Carlos* to stay all federal proceedings on the tribes' water rights claims until the state proceeding could be concluded).

In *Arizona v. San Carlos*, the United States Supreme Court ruled that the United States waived its sovereign immunity in comprehensive state adjudications of water rights under the McCarran Amendment, 43 U.S.C. § 666, and therefore, the federal courts would defer to the state courts to adjudicate the water rights claims of the United States acting as trustee for Indian Tribes. Accordingly, neither prior to nor after this ruling in *Arizona v. San Carlos*, did the federal district court refer the matter of the Tribe's claims to the Gila River to the *Globe Equity* court.

In *Arizona v. San Carlos*, the United States Supreme Court explained its reasoning for the inclusion of the United States' water rights claims on behalf of the Tribes in the state adjudications, including in the Arizona General Stream Adjudication:

> If the state proceedings have jurisdiction over the Indian water rights at issue here, as appears to be the case, then concurrent federal proceedings are likely to be duplicative and wasteful, generating "additional litigation through permitting inconsistent dispositions of property." *Colorado River*, 424 U.S., at 819. Moreover, since a

> judgment by either court would ordinarily be res judicata in the other, the existence of such concurrent proceedings creates the serious potential for spawning an unseemly and destructive race to see which forum can resolve the same issues first – a race contrary to the entire spirit of the McCarran Amendment and prejudicial, to say the least, to the possibility of reasoned decisionmaking by either forum.

The U.S. Supreme Court also acknowledged the Tribe's sovereign immunity in the State proceeding, but suggested that the Tribe should appear in the State proceeding to protect itself. *See id.* at 567, n.17. Given the rulings of the United States Supreme Court, the Tribe intimately understood that it was directed by the Supreme Court to adjudicate its water rights claims in the Arizona General Stream Adjudication, including its claims to the mainstem of the Gila River which ultimately required the Adjudication court to determine whether or not res judicata precluded the Tribe from asserting these claims. Both the United States and the Apache Tribe filed these claims in the General Adjudication in 1985.

Thus, when the Tribe intervened on its own behalf in *Globe Equity* in 1990, the Tribe understood that it could not request the *Globe Equity* court, (a federal court), to adjudicate its rights and claims to the Gila River mainstem, because the Supreme Court had directed that the McCarran Amendment required federal courts to defer to the State General Adjudication which had already taken jurisdiction over the Tribe's water rights and claims. *See Arizona v. San Carlos*, 463 U.S. at

550. If presented with the issue, the *Globe Equity* court would have been required to send the Tribe to the Adjudication court. The Tribe was acutely aware of this fact and was not "forum shopping" as suggested by the Court's Decision at 46-47.

The *Globe Equity* court's recognition that rights beyond the scope of the *Decree* would not be addressed by that court is also made clear in the *Globe Equity* court's May 2, 1983 Order ("1983 Order"), which states, in relevant part that "[t]o the extent GRIC may wish to assert rights other than those litigated in the *Decree*, those rights, if any, cannot be impaired or impeded by the continued existence of the *Decree*. The *Decree*, by definition, would not affect such rights." 1983 Order at 7. The *Globe Equity* court did not permit GRIC to intervene to address any rights beyond the scope of the *Globe Equity Decree*. In this respect it was understood that the *Globe Equity* court did not have continuing jurisdiction over any water rights or claims alleged outside the *Decree*. Thus, with its original action stayed by *San Carlos v. Arizona*, 721 F.2d 1187 (9th Cir. 1983), the Tribe did not seek to litigate any of its federal reserved or aboriginal water rights claims in another federal case, including in *Globe Equity*.

Due to the operation of the McCarran Amendment, the *Globe Equity* court is not permitted to provide the remedy of an adjudication of the Tribe's water rights. Under *Lapin*, the court held that "considerations of comity and orderly

administration of justice demand that the nonrendering court should decline jurisdiction of such an action and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there." *Lapin*, 333 F.2d at 172. In the case at hand, the *Globe Equity* court offers no remedy to the Tribe. If this occurred, it would create the very situation that the Supreme Court has concluded is improper under the McCarran Amendment.

D. **Assuming That Principles of Comity Apply, the Court Still Should Not Rule That the Tribe is Precluded from Claiming Water Rights in This Adjudication**

The Court's interpretation that the *Globe Equity* court "had already intimated its view of a tribe's ability to challenge both the validity of the *Decree* and the adequacy of the United States' representation in the *Globe Equity* litigation . . ."[10] also misunderstands the *Globe Equity* court's 1983 Order.

Even assuming *arguendo* that the Tribe is bound to seek relief in the *Globe Equity* court to address the Tribe's defense to res judicata, in fact, the *Globe Equity* court did not rule in 1983 that the Apache Tribe is precluded from claiming additional water rights to the mainstem of the Gila River.[11]

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[10]Decision at 42.

[11]The Tribe respectfully disagrees with the Court's statement that "[t]he Tribe argues that the district court's 1983 ruling with respect to GRIC's intervention establishes that the Tribe cannot obtain relief in the court that issued

Thus, even if principles of comity were to require the Court to honor the rulings of the *Globe Equity* court, the Court should not have properly based its decision upon the *Globe Equity* court's 1983 Order which is in reference to another Indian Tribe (GRIC).[12] The Tribe was not a party in the *Globe Equity* litigation until 1990. The 1983 Order was directed towards GRIC, not the Tribe, and GRIC had significantly different factual circumstances and arguments which predicated the Court's 1983 Order. Moreover, the 1983 Order did not rule regarding the preclusive effect of the *Decree* as to the Tribe or as to GRIC.

Indeed, the 1983 Order did not consider whether GRIC could show inadequate representation by the United States, and thus, did not consider any argument as to res judicata. *See* 1983 Order at 7-8. While the *Globe Equity* court did determine that "it [was] too late in the day for GRIC now to complain of its representation back in 1935" this ruling on timeliness was expressly predicated and issued "in light of [GRIC's] **failure to appeal** the 1935 denial of their motion to intervene." *Id.* at 3 (emphasis added).

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the *Decree*, and therefore the Tribe should be allowed to pursue such relief here." Decision at 48. When the Tribe intervened in *Globe Equity* in 1990, the Tribe did not maintain then, nor does it maintain now, that the issue of lack of privity and inadequate representation should be made in a Rule 60(b) motion filed in the *Globe Equity* court to vacate or set aside the *Decree*.

[12]Decision at 46-49.

Accordingly, the timeliness concern expressed by the *Globe Equity* court in the 1983 Order merely related to GRIC's failure to appeal the denial of its first motion to intervene, which was denied in 1935 (prior to the entry of the *Globe Equity Decree*). *Id.* at 3, 8. Given this initial failure of GRIC to appeal, the court concluded that it need not even address the adequacy of representation arguments presented by GRIC which might seek to vacate or relitigate issues in the *Decree*. The 1983 Order simply does not provide a ruling as to the Tribe which the Court could adequately apply the principles of comity.

The *Globe Equity* court has not spoken as to whether or not the *Globe Equity Decree* precludes the Tribe from making its claims to the mainstem of the Gila River. Thus, this Court could not have ruled, in light of its ruling that the *Globe Equity* Court has jurisdiction over the matter, that the Tribe is precluded from claiming water rights in the Adjudication.

The Apache Tribe respectfully urges that the only appropriate way for this Court to rule on whether or not the Tribe is precluded from asserting its water rights claims in the Adjudication is to squarely address the Tribe's defense of inadequate representation and corresponding lack of privity between the United States and Apache Tribe.

D. Conclusion

Based upon the foregoing, the Apache Tribe requests that the Court grant its motion for reconsideration. The manifest injustice done to the Tribe in the *Globe Equity* proceeding should not be ignored, and all relief for the Tribe to the mainstem forever denied, based upon the judicial doctrine of comity. This would simply compound the violation of due process and the fundamental unfairness previously visited upon the Tribe by its trustee, the United States, in *Globe Equity*.

RESPECTFULLY SUBMITTED this 24th day of February, 2006.

SPARKS, TEHAN & RYLEY, P.C.

By _____

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ORIGINAL AND SIX COPIES of the foregoing were mailed for filing this 24th day of February, 2006, to:

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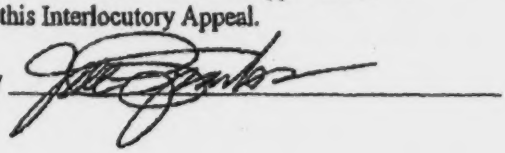
A COPY of the foregoing was mailed this 24th day of February, 2006, to all parties who filed notices of appearances in this Interlocutory Appeal.

By 

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	**Case Nos. W-1, W-2, W-3, W-4 (Consolidated)** (Special Master George A. Schade, Jr.) **ARIZONA DEPARTMENT OF WATER RESOURCES' STATUS REPORT**

CONTESTED CASE: None.

HSR INVOLVED: None.

DESCRIPTIVE SUMMARY: The Arizona Department of Water Resources hereby files a status report regarding adjudication activities and resources.

NUMBER OF PAGES: 14.

DATE OF FILING: January 31, 2006.

As requested on January 19, 2006 by the Special Master during open court, the Arizona Department of Water Resources (ADWR) hereby files a status report that addresses: (1) ADWR's adjudication activities and resources, (2) ADWR's progress on mapping the subflow zone, (3) ADWR's efforts to obtain additional resources for fiscal year 2007 (FY07), and (4) information concerning surface water and federal claimants in the San Pedro River Watershed. These matters are discussed below.

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Introduction

As required by statute and court order, ADWR provides technical support at the court's request, and administrative support on an on-going basis to the Gila River and Little Colorado River (LCR) adjudications. These are massive judicial proceedings involving over 85,000 statements of claimant (SOCs) in the Gila River adjudication and over 14,000 SOCs in the LCR adjudication. ADWR places a high priority on providing technical and administrative assistance to the adjudication process. However, ADWR's ability to continue to provide the necessary technical and administrative support is affected by budgetary constraints, increased activities in its existing programs and new statutory responsibilities in other programs.

Since ADWR began working on the adjudications in the 1980s, ADWR's budget has been severely reduced. In the mid-1990s, while legal issues were being addressed in each of the adjudications, ADWR's staffing level was reduced substantially. When the proceedings resumed, ADWR was experiencing department-wide budget constraints, some which were the result of significant shortfalls in state revenues due to the events of September 11, 2001. The overall lack of revenues through fiscal year 2006 affected the level of resources available to ADWR for technical and administrative support to the Gila and LCR adjudications. Although state revenues have begun to recover, as discussed further below, ADWR has not been able to obtain additional adjudication resources, and at this time appears to have lost overall resources for FY07.

The level of resources that ADWR dedicates to the adjudication program is dependent on available revenues, but also must take into consideration ADWR's other statutory responsibilities that compete for departmental resources. Other program areas include administration and/or regulation of surface water, artificial lakes, groundwater, well construction, underground water storage, water exchanges, dam

safety, flood control and interstate streams. These program areas involve statutorily mandated licensing activities that must be completed within certain time frames established by statute and/or rule. See A.R.S. §§ 41-1072 *et seq.*, A.A.C. R12-15-401. Additional resources are devoted to defending ADWR in court on legal issues surrounding these programs.

Progress within the Gila River and LCR adjudications depends not only on available resources, but also on the resolution of complex legal and procedural issues, which require the attention of the court, the parties and often ADWR. The adjudications are inherently complicated both technically and legally, which presents difficult and time-consuming challenges.

Current Adjudication Resources

Resources currently available for the adjudication program are limited and depend in part on ADWR's other statutory obligations, as discussed above. Staff dedicated to providing technical assistance to the court consists of two attorneys (half-time each), one registered geologist/hydrologist (half time), an intern (full-time), and one administrative assistant (full-time). On an as-needed basis, ADWR also draws on expertise from personnel within other program areas including hydrologists, groundwater flow modelers, Geographic Information System (GIS) and database specialists, field investigators, and publication and administrative support staff. The adjudication program further relies upon the availability of certain resources to collect, analyze and present data regarding water uses in the state, such as Global Positioning System (GPS) units, satellite imagery, aerial photography, digital land use information, and relational databases. However, the availability of non-dedicated staff and resources for the adjudication program necessarily competes with ADWR's other statutorily mandated responsibilities.

Adjudication Activities

Although its resources were limited, ADWR has provided assistance to the adjudication process on a variety of technical and administrative matters since 1999. ADWR issued technical reports concerning the San Carlos Apache Tribe settlement, a subflow report for the Upper San Pedro River Watershed, a supplemental contested case hydrographic survey report (HSR) for Phelps Dodge's claims to Show Low Lake,[1] and a boundary report on the PWR 107 claims. However, due to resource constraints, ADWR was only able to provide this technical support on one matter at a time.

Administratively, ADWR reinitiated and brought current a process that stopped in 1986 in the LCR adjudication and in 1991 in the Gila River adjudication for issuing new use summons. Through the end of calendar year 2004, ADWR served over 25,000 new use summons. ADWR also researched and updated addresses in the LCR SOC database to facilitate the mailing of required notices in 2004 and 2005, and brought the LCR SOC database current. The time required to complete these tasks was also affected by resource constraints.

In calendar year 2006, ADWR anticipates working on several adjudication matters that require both technical and administrative support. These include technical reports for Indian water right settlements in the LCR and Gila adjudications, and the HSR for the Hopi Reservation, as well as facilitation of the discovery process for contested cases in the San Pedro River Watershed, and undertaking administrative activities. ADWR will be limited in its ability to work on more than one of the technical reports at a time.

[1] After ADWR published the final report and provided notice throughout the LCR adjudication, Phelps Dodge withdrew its claim and abandoned its water right to Show Low Lake

Zuni Settlement. ADWR understands that its assistance will be required as part of the settlement of claims for the Zuni Reservation (Zuni Settlement). From statements made during the court proceedings of January 19, 2006, ADWR anticipates that an application for special proceedings will be filed in February 2006 pursuant to Arizona Supreme Court Administrative Order of September 27, 2000 (Administrative Order) for the LCR adjudication. Upon entry of an order granting the application, the parties must provide notice of the special proceedings to each of approximately 5,000 claimants within the LCR adjudication. (Administrative Order at ¶ E.2.) This in turn requires ADWR to provide the parties with a database of addresses for the LCR claimants. ADWR last used this database in January 2005 for the Show Low Report notice, at which time addresses and ownership information had been updated. ADWR is currently inputting new SOCs into that database and reviewing it for accuracy. That process is almost complete, and ADWR expects to be able to provide the settling parties with the necessary information in a timely fashion.

In addition to this administrative support, ADWR may also be required to prepare a technical report including a factual analysis and/or technical assessment of the Indian water rights subject to the Zuni Settlement. (Administrative Order at ¶ B.3.f.) Whether ADWR should prepare such a report, the content of the report, and the time for its completion are matters within the court's discretion. *Id.* However, because of the deadlines associated with the Zuni Settlement, if ADWR were directed to prepare a report, ADWR could be required to complete it within 60 days. During this time, however, ADWR's resources are already committed to providing technical

support to the Arizona Water Settlement, which involves claims for two other Indian reservations.[2] The Arizona Water Settlement is described further below.

A Zuni Settlement technical report would be the first such report prepared in the LCR adjudication, and its content is subject to the court's discretion. In the Gila River adjudication, ADWR prepared various Indian water right settlement reports that included combinations of the following: a review of the settlement agreement, a summary of the associated adjudication claims, a description of available surface water and groundwater resources as well as historic and current water use on the Indian reservations or lands, and the impact of the settlements on water resources and other existing water users. These reports were utilized by the court in the Gila River adjudication to assist it with its assessment of the settlement agreements. Presumably the content of the Zuni Settlement report would be used in like manner. See Administrative Order at ¶ D.6.

Arizona Water Settlement. ADWR understands that the settling parties may also file an application in the Gila River adjudication for special proceedings concerning the settlement of the claims of the Gila River Indian Community and Tohono O'odham Nation (Arizona Water Settlement). These special proceedings are similar, but not identical, to those in the LCR adjudication. See Arizona Supreme Court Special Procedural Order of May 16, 1991 (Special Procedural Order). In order to meet the settlement deadlines, it is likely that the application for the Arizona Water Settlement will be filed this summer.

As with the Zuni Settlement, the filing of the Arizona Water Settlement application could require ADWR to prepare a technical report containing a factual

[2] The resources required for ADWR to complete mapping of agricultural lands for the Arizona Water Settlement may compete with some of the resources required for a Zuni Settlement technical report.

analysis or technical assessment of the Gila and Tohono O'odham water rights subject to the settlement. Under the Special Procedural Order, if requested, ADWR would be required to complete the technical report within 45 days unless the time were extended. Special Procedural Order at ¶¶ B.3.f. and E.6.

The filing of the application for special proceedings will also require ADWR to accelerate its update of the address database for claimants within the Gila River adjudication. ADWR estimates that there are over 28,000 claimants in the Gila River adjudication, not including a backlog of over 8,000 SOCs that have not yet been entered into the SOC database. ADWR will be required to update the addresses in the existing database and input the backlog of SOCs. ADWR intends to provide this information in a timely manner so that settlement deadlines may be met.

Hopi HSR. The Hopi Reservation covers 2,500 square miles with claims to over 500 stockponds and reservoirs, 300 springs, 200 wells and 40,000 acres of croplands. To date, ADWR has conducted selected field inspections of stockponds and croplands,[3] and analyzed historic aerial photographs, historic accounts of agricultural and livestock production, and other documentation relating to the water rights claims filed by the Hopi Tribe and the United States on its behalf for the Hopi Reservation (Hopi HSR). One of the tasks that ADWR hopes to complete in the next few months is to determine whether additional field mapping of croplands is necessary based on its analysis of recently collected one-meter resolution aerial photography. ADWR is currently in the process of providing the necessary training to make this analysis. The time required to complete this task and others for the Hopi HSR will be affected by court requests for other technical assistance.

[3] In order to take advantage of the growing season, ADWR utilized personnel from other program areas to inspect croplands, which in turn created delays in other high priority work.

If ADWR were requested to prepare technical reports for the Zuni Settlement and/or the Arizona Water Settlement, then further effort on the Hopi HSR likely would be delayed or postponed. As indicated on several occasions in the past, ADWR does not have the resources to work on more than one technical matter at a time for the adjudication program.

Discovery. Pursuant to orders of the Special Master dated May 5, 2005 and May 19, 2005, ADWR facilitates the disclosure of documents in *In re Ft. Huachuca* (W1-11-605) and *In re State Trust Lands* (W1-104). ADWR receives hard copies of the disclosed documents, electronically-imaged copies and electronic indices. On its web site, ADWR currently maintains an electronic index of disclosed documents, and is in the process of posting the electronic images. By January 31, 2006, the United States indicated that it will amend its claims for the San Pedro Riparian National Conservation Area, which may result in the initiation of another contested case with disclosure deadlines. ADWR expects these activities to continue throughout calendar year 2006.

Administrative activities. On an ongoing basis, ADWR provides administrative support to the adjudication process. This support includes updating the SOC databases, processing filing fees, serving new use summons, mailing notices to claimants and non-claimants, maintaining a central information repository and responding to public inquiries. The databases associated with these activities include over 14,000 SOCs and approximately 5,000 claimants in the LCR, and over 85,000 SOCs and approximately 28,000 claimants in the Gila. Over the next few months, in order to meet settlement deadlines for the Arizona Water Settlement, ADWR will be reviewing and updating its existing SOC database for the Gila River adjudication, which is currently experiencing an 8,000 SOC backlog. For the Zuni Settlement, the LCR SOC database is almost current and a mailing list will be available soon.

Subflow Activities

Since 1931, when *Southwest Cotton* was decided, the Arizona Supreme Court has recognized that the withdrawal of water from a well (subflow) may have a direct and appreciable impact on stream flows.[4] However, the methodology for determining whether a particular well is or may be withdrawing subflow is an issue that has been before the Gila River adjudication trial court and the Arizona Supreme Court for close to two decades, and has not yet been completely resolved.

To date, the Gila River adjudication court has addressed subflow issues three times, and each time parties have sought review of the trial court's decision in the Arizona Supreme Court. Subflow issues were first addressed by the Gila River adjudication court in a five-day evidentiary hearing on the relationship between surface water and groundwater. This resulted in an order dated September 9, 1988 that set forth a 50%/90-day test for determining whether a well is withdrawing appropriable subflow. In 1991, this test was brought before the Arizona Supreme Court for review. By decision dated 1993 (*Gila II*),[5] the Arizona Supreme Court vacated the portion of the 1988 order that formulated the 50%/90-day test and remanded the matter to the trial court to take further evidence and apply the principles set forth in the Arizona Supreme Court's decision. In 1994, after a lengthy evidentiary hearing process, the trial court issued a detailed order regarding the definition of subflow that also went before the Arizona Supreme Court for review. By decision dated 2000 (*Gila IV*),[6] the Arizona Supreme Court adopted the subflow definition and

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[4] Maricopa County Municipal Water Cons. Dist. No. 1 v. Southwest Cotton Co., 39 Ariz. 65, 9 P.2d 369 (1931).
[5] In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 175 Ariz. 382, 857 P.2d 1236 (1993).
[6] In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 198 Ariz. 330, 9 P.3d 1069 (2000).

methodology presented in the trial court's 1994 order. The matter then returned to the Gila River adjudication court for implementation.

In order to implement *Gila IV*, the court requested that ADWR prepare a technical report for that purpose. In March 2002, ADWR issued a subflow technical report for the Upper San Pedro River Watershed that addressed technical issues associated with implementing *Gila IV*. The parties filed objections, issues were briefed and argued, and a hearing was held before the Special Master in which ADWR participated. In July 2004, the Special Master filed a report containing 39 recommendations for consideration by the adjudication judge. The parties filed additional briefs, and the court heard argument from the parties and ADWR. In September 2005, the adjudication judge issued an order that adopted many of the Special Master's recommendations, with some exceptions. On December 31, 2005, two petitions for review were filed with the Arizona Supreme Court challenging the court's decision on three basic issues. The Arizona Supreme Court has not yet determined whether the petitions will be accepted for review.

Of concern is whether ADWR should implement the Special Master's Recommendation No. 36 at this time. This recommendation was approved by the adjudication judge and sets forth several steps to be implemented by ADWR. ADWR must prepare a map delineating the subflow zone for the entire San Pedro River Watershed, present the map and related information in a technical report, and provide notice of the filing of the report and the opportunity to file objections. After the court approves the subflow zone map, then ADWR must apply cone of depression tests to wells located outside the lateral limits of the subflow zone, determine whether any of

the water right claims should be considered *de minimis*, and ultimately publish a Supplemental Final San Pedro River Watershed HSR with appropriate notice throughout the entire Gila River adjudication. Neither the Special Master nor the adjudication judge has issued an order establishing a timeline for implementation of these steps.

ADWR's ability to begin the work described by the Special Master is a function of available resources, other adjudication activities, and competing priorities driven by statute. As part of ADWR's 2002 Subflow Report, ADWR presented several stream flow and geologic maps, which were later supplemented by soils maps as part of the Special Master's hearing process. ADWR recognizes that this work needs to be expanded to include the entire San Pedro River Watershed, more information needs to be researched, and field inspections may be necessary. At this time, ADWR lacks the resources to work simultaneously on the subflow zone mapping and the other technical and administrative adjudication matters described above, in addition to its other statutory responsibilities.

ADWR is also mindful of the status of the litigation regarding issues that affect the mapping of the subflow zone. The petitioning parties claim that predevelopment conditions may not be used, that the individual criteria described in *Gila IV* must be used instead of the floodplain Holocene alluvium, and, if the floodplain Holocene alluvium were utilized, it could not be assumed that the its entire lateral extent is saturated. Given the uncertainties regarding these basic properties of the subflow zone, ADWR submits that these issues that should be resolved before ADWR is tasked with further subflow zone mapping. In the 1991 HSR for the San Pedro River Watershed (1991 San Pedro HSR), ADWR expended considerable resources to classify wells and delineate three hydrologic subflow zones in reliance on the 50%/90-day test. Because that subflow test was later overturned in *Gila II*, ADWR is now

required to supplement the 1991 San Pedro HSR using a new subflow analysis that includes mapping the subflow zone. If ADWR were to proceed with delineating the subflow zone again before the Arizona Supreme Court takes action on the pending petitions for review, it could become necessary to repeat those efforts once more.

ADWR must use its resources judiciously in order to provide technical and administrative support to the Gila River and LCR adjudications. The subflow issues addressed over the last 20 years are complicated both technically and legally. The court's order of September 2005 completes a significant phase of the legal process, but review has been sought by the Arizona Supreme Court that could affect further proceedings if granted. As yet, the court has not established a timeline for implementing any of the steps recommended by the Special Master, including additional mapping of the subflow zone by ADWR. As in the past, ADWR suggests that such a timeline take into consideration ADWR's available resources and other adjudication responsibilities, with input from the parties concerning adjudication priorities. In calendar year 2006, ADWR's available resources may be fully committed by other adjudication matters.

Additional Resources

Technical and administrative support for the Gila River and LCR adjudications is a high priority, but ADWR's ability to provide this support has been limited by budget constraints and statutorily mandated activities in other program areas. During calendar year 2005, ADWR considered this resource issue and determined that a budget increase of approximately $900,000 would allow ADWR to provide additional adjudication support to the court through an increase in technical and administrative staff dedicated to the adjudication effort. Although requested, these funds are not in ADWR's current budget for FY07. And, at this time, ADWR is facing a potential

decrease in its entire FY07 budget of $1.7 million. Budget restrictions continue to challenge ADWR's ability to meet its statutory obligations department-wide.

List of Surface Water and Federal Claimants

To the extent feasible, the Special Master requested that ADWR provide a list of surface water and federal claimants for the San Pedro River Watershed. ADWR understands that this list was requested to determine whether any other contested cases could be organized in the San Pedro River Watershed. Historically, these contested cases have been organized based on information in the 1991 San Pedro HSR.

Attached are three lists of claimants that were included in the 1991 San Pedro HSR. These lists identify (1) "major water users" that divert surface water for agriculture, industrial/mining and municipal purposes, (2) instream flow claimants, and (3) non-Indian federal claimants. To the extent known to ADWR, additional information regarding these uses is included in the lists.

A more comprehensive list of surface water claimants would require ADWR to query its SOC database to access information contained in watershed file reports. Because this database was established several years ago and relies upon software not well-suited to its size, the necessary queries would require two to three weeks to run and review. Undertaking this effort at this time would conflict with reviewing and updating the LCR and Gila River adjudication databases, which are essential for meeting the settlement deadlines. ADWR awaits further direction from the Special Master on this matter.

DATED this 31st day of January 2006.

ARIZONA DEPARTMENT OF WATER RESOURCES

W. Patrick Schiffer, Chief Counsel
Janet L. Ronald, Deputy Counsel
Scott M. Deeny, Deputy Counsel
3550 N. Central Ave.
Phoenix, Arizona 85012

ORIGINAL of the foregoing
sent by first-class mail on the 31st day of
January 2006 to:

Clerk of the Superior Court
Maricopa County
Attention: Water Case
601 W. Jackson Street
Phoenix, AZ 85003

COPIES of the foregoing
sent by first class mail the
31st day of January 2006 to:

Honorable Eddward Ballinger, Jr.
Judge of the Superior Court
Northeast Regional Court Center
18380 N. 40th Street, Courtroom 112
Phoenix, AZ 85032

Special Master George A. Schade, Jr.
Arizona General Stream Adjudication
Arizona State Court Building
1501 West Washington, St., Suite 228
Phoenix, AZ 85007

All parties on the court-approved mailing list
for Case No. W-1, W-2, W-3 and W-4 (Consolidated)

"MAJOR WATER USERS" IDENTIFIED IN THE 1991 SAN PEDRO RIVER WATERSHED HSR THAT DIVERT SURFACE WATER

Agriculture:

- Aravaipa Creek Irrigation Water Users – 22 landowners irrigating a total of about 400 acres with water diverted from Aravaipa Creek.
- Bayless and Berkalew Company – irrigation of about 170 acres near the town of Redington with water diverted from the San Pedro River.
- Pomerene Water Users Association – estimated annual diversion of about 1500 acre-feet of water from the San Pedro River south of Benson; previously organized by Special Master as a contested case.
- St. David Irrigation District – estimated annual diversion of about 4400 acre-feet from the San Pedro River between 1968 and 1971.

Industrial/Mining:

- ASARCO –uses wells in the San Pedro River Watershed, but also obtains water from the Gila River.
- *All other major water users in this category utilize wells.*

Municipal:

- City of Tombstone – On average, about ½ of their water supply (100 to 200 afa) comes from springs in the Huachuca Mountains.
- *All other major water users in this category utilize wells.*

INSTREAM FLOW CLAIMANTS LISTED IN THE 1991 SAN PEDRO RIVER WATERSHED HSR

- Arizona State Land Department
  - Buehman Canyon
- Bureau of Land Management
  - Aravaipa Creek
  - Babocomori River
  - Bass Canyon
  - Hot Springs Canyon
  - Redfield Canyon
  - San Pedro River (3 separate applications)
  - Swamp Springs Canyon
  - Wildcat Canyon
- J. Hughes
  - San Pedro River
- The Nature Conservancy
  - Aravaipa Creek (4 separate applications)
  - O'Donnell Creek
  - Ramsey Creek
  - San Pedro River
- U.S. Forest Service
  - Miller Canyon Creek

Note – see page 445 of HSR for listing of claimed amounts, which range from 452 to 146,940 acre-feet per year.

NON-INDIAN FEDERAL CLAIMANTS LISTED WITH "MAJOR WATER USERS" IN THE 1991 SAN PEDRO RIVER WATERSHED HSR

- Arizona State Land Department – current contested case with ongoing disclosure.
- Bureau of Land Management (PWR 107 claims) – settlement negotiations ongoing.
- Coronado National Forest (Powers Garden) – total claim of about 1 acre-foot per year.
- Fort Huachuca – current contested case with ongoing disclosure.
- National Park Service (Coronado National Memorial) – court approved partial decree.
- National Park Service (Saguaro National Monument) – court approved partial decree.

36

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MAY 19 '06
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Processed
MAY 19 '06
Clerk of the Court

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MAY 22 2006
SPARKS, TEHAN, & RYLEY, P.C.

GEORGE A. SCHADE, JR.
Special Master
Arizona General Stream Adjudication
Arizona State Courts Building, Suite 228
1501 W. Washington Street
Phoenix, AZ 85007
(602) 542-9600
State Bar No. 003289

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE LITTLE COLORADO RIVER SYSTEMAND SOURCE	W-1 (Salt) W-1 (Verde) W-3 (Upper Gila) W-4 (San Pedro) REPORT OF THE SPECIAL MASTER CONCERNING FUNDING OF THE ARIZONA DEPARTMENT OF WATER RESOURCES

CONTESTED CASE NAME: None.

HSR INVOLVED: None.

DESCRIPTIVE SUMMARY: The Special Master submits a report recommending the organization of a work group to review and recommend funding sources for the administrative and technical support provided by the Arizona Department of Water Resources.

NUMBER OF PAGES: 6.

DATE OF FILING: May 18, 2006.

At the status conference held in the Little Colorado River Adjudication on May 12, 2006, the Special Master brought to the Court's attention the issues presented in this report. The Court requested the Special Master to submit his comments in a report filed in both adjudications.

In January, 2006, the Arizona Department of Water Resources ("ADWR") informed the Court that "ADWR does not have the resources to work on more than one technical matter at a time for the adjudication program."[1] Currently, ADWR expects to be directed to prepare two technical reports for upcoming special proceedings related to the Arizona Water Settlements Act,[2] anticipates working on subflow issues in the San Pedro River Watershed, is working on the Hopi Reservation Hydrographic Survey Report ("HSR"), and anticipates being directed to provide assistance in other ongoing contested cases as well as the special proceeding *In re Proposed Zuni Indian Tribe Water Rights Settlement*. The Department continues to provide administrative assistance with the service of process of new use summonses and the litigation support central repository.

The Special Master agrees that ADWR cannot simultaneously undertake all or even most of the technical work the Court has set. This inability has, and unless resolved, will continue to impact the manner and speed with which both adjudications advance. The progress of the adjudications was originally based on the publication of comprehensive HSRs for watersheds and federal reservations. The Special Master believes that in order to accommodate funding limitations, the adjudications are drifting from that accepted and directed core concept.

The problem is lack of adequate funding to enable ADWR to provide the required level of administrative and technical support for the adjudications. ADWR has reported that:

> Resources currently available for the adjudication are limited and depend in part on ADWR's other statutory obligations.... Staff dedicated to providing technical assistance to the court consists of two attorneys (half-time each), one registered geologist/hydrologist (half-time), an intern (full-time), and one administrative assistant (full-time). On an as-needed basis, ADWR also draws on expertise from personnel within other program areas including hydrologists, groundwater flow modelers, Geographic Information System (GIS) and database

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[1] ADWR's Status Report 8 (Jan. 31, 2006).

[2] Pub. L. No. 108-451, 118 Stat. 3478 (2004).

> specialists, field investigators, and publication and administrative support staff. ... However, the availability of non-dedicated staff and resources for the adjudication program necessarily competes with ADWR's other statutorily mandated responsibilities.[3]

To compare with two states whose adjudications are comparable to Arizona's, currently, Idaho's Adjudications Bureau, which is part of the Idaho Department of Water Resources, has 37 staff persons,[4] and Montana's Water Rights Bureau Adjudication Program, a part of the Department of Natural Resources and Conservation, has 28 positions.[5] In January 1995, ADWR's former Adjudications Division had 31 staff persons; in the early 1990s, the Division had authorized personnel of 40 employees.

In 2005, "ADWR considered this resource issue and determined that a budget increase of approximately $900,000 would allow ADWR to provide additional adjudication support to the court through an increase in technical and administrative staff dedicated to the adjudication effort." ADWR requested this additional funding, but the funds were not included in the Governor's proposed budget for Fiscal Year 2007.[6]

The Executive's protocol is that if a state agency's funding request is not included in the Governor's proposed annual budget, the agency cannot lobby the Legislature for the funding. Therefore, ADWR could not on its own lobby the Legislature for the $900,000 funding request.

This situation offers a view of what could happen in the future and some of the alternatives to address such a situation. If ADWR cannot lobby for adjudication funding, other ways to seek that funding are to (1) ask or depend on claimants or their counsel to contact

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[3] ADWR's Status Report 3.
[4] See http://www.idwr.idaho.gov/water/srba/people.htm.
[5] See http://dnrc.mt.gov/wrd/about_us/staff_directory/default.asp.
[6] In its January 31, 2006, report, ADWR stated that "[a]t this time, ADWR is facing a potential decrease in its entire FY07 budget of $1.7 million." Status Report 12-13.

legislators, (2) ask the Judiciary's lobbyists to lobby for ADWR's funding requests, and (3) have the Court, Special Master, or both visit legislators.

The Special Master found the following difficulties with these actions: (1) parties can have differences of opinion and lack of agreement about the adequacy and urgency of levels of funding, (2) claimants may support adjudication funding, but their legislative agendas are set by others, and those agendas may focus on other issues, (3) people are not motivated to lobby for an agency's funding when the agency itself cannot do it, and (4) as for the Court and Special Master lobbying the Legislature, besides the judicial and political propriety of doing so, the Court lacks the expertise, wherewithal, contacts, and time to do that job at all.

The solution is to implement a funding mechanism that is ongoing, stable, and free of political vicissitudes. Funding must be viewed not only from the immediate need for field investigations and technical assessments to get where we should have been years ago but also for the benefits of retaining the most qualified staff and always using the best hydrology, computer capability, and mapping as we move into the future.

A funding mechanism could take several forms such as increasing filing fees, assessing all or some adjudication claimants, assessing all or some water right holders, assessing water uses, and asking parties involved in water rights settlements to contribute as part of the settlement. The Special Master does not have an answer, preference, or opinion as to the propriety of a specific funding idea. In St. Johns, on May 12, the Court expressed reservations about assessments.

A part of the mechanism could be the institution of benchmarks to evaluate and measure the progress of the adjudications. Funding levels would be related to the overall progress of the adjudications.

In order to accomplish these objectives, the Special Master recommends that the Court appoint and direct a working group to explore and recommend a stable and ongoing funding mechanism for both adjudications. The Court should expressly direct that the scope of the recommendations of the working group shall be limited to funding for ADWR and shall not include any proposed legislative amendments that are not directly and legitimately related to a funding mechanism.

The group would be composed of representatives of surface water, groundwater, Tribal, state and federal government, and small claimants. Consideration should be given to including representatives of the Administrative Office of the Courts, the Superior Court of Arizona, and the Directorate of ADWR. It is suggested that members of this working group could be clients rather than legal counsel, especially clients who have expertise in fiscal and legislative matters. The Special Master may be a member of the group but shall not chair the group, and his standing within the group shall be the same as that of any other member.

The group should not have more than ten members so that its efforts can be focused and speedily put to work. The Court should appoint a chair to serve for a one year term. The group would not be managed as a steering or a settlement committee is generally managed and would terminate upon conclusion of its duties.

Because A.R.S. § 45-255(A) allows the Court to fix and pay "other expenses related to the conduct of an adjudication" out of the funds of fees paid by claimants, the Court could direct that the members will be reimbursed, in accordance with the policies of the office of the Special Master, their travel expenses from the funds of filing fees, the expenses to be borne equally by the two funds.

Meetings would be announced to both Court-approved mailing lists, and would be open to all claimants and interested persons. The group should be able to meet in executive session.

The Court would request the group to file a detailed report within five months after being formed with the idea of possibly submitting proposed legislation in 2007. This process, however, may take longer to realize legislative results.

The Court would approve or reject, following comments by claimants, any recommendations presented to it. Recommendations would not be referred to the Special Master for hearing.

Because results may not be achieved or implemented for possibly two or three years, it is recommended that the Court promptly bring this matter to the attention of all claimants.

Submitted this 18th day of May, 2006.

GEORGE A. SCHADE, JR.
Special Master

On May 18, 2006, the original report was filed with the Clerk of the Court and a copy of the report was delivered to the Distribution Center for distribution to all persons listed on the Court-approved mailing list for Case No. W-1, W-2, W-3, and W-4 (Consolidated) dated February 28, 2006.

Kathy Dolge

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DEPARTMENT OF WATER RESOURCES
99 East Virginia Avenue
Phoenix, AZ 85004

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DEPT. OF WATER RESOURCES

IN RE:

The Adjudication of all rights to use water in the Gila River System and Source.

(leave blank)

File No. 39-63614

Filed: 11-1-85 at ____ M.
(date) (time)

Statement of Claimant Form for the Upper Gila River Watershed.
The State Land Department has enclosed with the accompanying Notice this form on which claimant shall present as required, the particulars of his claim of right to the subject waters. All applicable portions must be completed. A separate Statement of Claimant must be submitted for each source or point of diversion of public water unless these waters are commingled prior to use. A map published by the United States Geological Survey or a map of equal standard shall be submitted with this Statement showing on the face of the map the particulars of point of diversion, place of use and other pertinent information.

(Print or type. If more space is required, use explanatory at end of form, or attachment.)

1. Name of Claimant: SAN CARLOS APACHE TRIBE OF ARIZONA
(Last) (First) (M.I.)

P. O. Box 0, San Carlos, Arizona, 85550 - Tel. No. 425-2361 - represented by Joe P. Sparks Sparks & Siler, P. C., 7503 First Street, Scottsdale, AZ 85251-Tel. No. 949-1339
(Address, City, State, Zip) (Telephone No.)

2. State the nature of the right or use on which claim is based: (indicate, and attach supporting documentation)

A. ___ Right to surface water initiated by beneficial use prior to June 12, 1919. Indicate registry number if previously submitted under Water Rights Registration Act _____.

B. ___ Court Decreed Water Right. Cite Title and Date of Case _____
Cause No. _____ County _____.

C. ___ Application for Permit to Appropriate Water filed. State Land Department Application No. _____, Permit No. _____, Certificate of Water Right No. _____.

D. ___ Claim of Water Right for a Stockpond. State Land Department Application No. _____.

E. x Other. Describe: See explanatory and Addendum attached hereto and made a part hereof.

3. A. Date of initiation of right: _____
(Month/Day/Year)

b. Date water first used for beneficial purposes: _____
(Month/Day/Year)

4. Purpose, annual amount and annual period of use:

Purpose	Amount		Month/Day		Month/Day
Information on each use is contained in the Addendum attached & made a part hereof.					
Irrigation	Pg. 1-2	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Domestic	Pg. 3	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Stockwater	Pg. 4	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Municipal	Pg. 3	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Power	Pg. 5-7	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Mining	Pg. 8-9	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Recreation	Pg. 10	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Wildlife	Pg. 11	ac.ft./~~address~~	From Jan.1	to	Dec. 31
Other Uses	Pg. 12-16	ac.ft./~~address~~	From Jan.1	to	Dec. 31

5. A.(1) If for irrigation purposes, describe place of use: (also indicate on map)

Township (N/S)	Range (E/W)	Section	Legal Subdivision	No. of Acres

The San Carlos Reservation exceeds 1,860,000 acres and is located in Gila, Graham, and Pinal Counties in Eastern and Central Arizona. The Reservation is unsurveyed and specific descriptions of sites are unavailable. All locations included herein are extrapolated.

(2) If land reclaimed over period of years, indicate schedule and amount of land reclaimed first and each subsequent year(s):

Clerk of the Superior Court
Received From D.W.R.
FEB 02 1987
Date
D. Grimm

5. A.(3) Indicate kind of crops cultivated:

Character of soil: _____

B. If for domestic purposes, number of persons: _____, or families: _____

C. If for stockwater purposes, number and kind of stock watered:

_____

D. If for municipal purposes, population to be served, and estimate of future requirements: _____

_____

E. If for power purposes, describe type of plant and capacity: _____

_____

F. If for mining purposes, describe purpose of use, location and character of the mine(s) to be served: _____

_____

G. If for recreational purposes, describe: _____

_____

H. If for wildlife purposes, including fish, describe: _____

_____

I. If for other purposes, describe: _____

_____

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6. A. Direct source of public water diverted: See explanatory tributary to _____ on the _____ watershed.

B. Point of Diversion (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____

C. Place of use (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____

7. State all other sources of water supply not described in Question 6 of this form.

A. Type of Source: See explanatory

B. Location of Source (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____

C. If other source is well, list following:

(1) Date well construction began: _____ (Month/Day/Year); Date well placed in use: _____ (Month/Day/Year).

(2) Location (10 acre subdivision) (indicate on map): _____ ¼ _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base Meridian, County of _____.

(3) State Land Department Intent to Drill, File No. _____, or Application for Permit No. _____.

(4) State whether free flowing or pump: _____. If pump, list type of pump and capacity: _____

(5) Casing depth _____ ft. Total well depth _____ ft. Diameter of casing _____ inches.

(6) Depth to water: _____ ft. (Static Level)

(7) Annual amount pumped, or otherwise extracted: _____ Ac.Ft./Gallons

(8) State purpose of use: _____.

(9) Indicate annual period of use: _____ (Month/Day) to _____ (Month/Day).

Water storage reservoir and/or diverting works: N/A

A. Location (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____

B. Name of storage reservoir and/or diverting works (if known): _____

C. Maximum capacity: _____ Ac.Ft.

D. Maximum depth of water: _____ ft.

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E. (1) Year construction began: _____.

(2) Year construction completed: _____.

(3) Date water first stored: _____ (Month/Year).

F. If dam, list following:

(1) Construction material: _____

(2) Maximum Length: Top _____ft.; Bottom _____ft.

(3) Maximum Width: Top _____ft.; Bottom _____ft.

(4) Maximum Height: _____ft.

G. If diverting works, describe: _____

_____.

I. Distribution works: N/A

A. If ditch or canal:

(1) Date construction began: _____.
(Month/Day/Year)

Date construction completed: _____.
(Month/Day/Year)

(2) Length of ditch or canal to first place of use: _____ft., total length of ditch or canal: _____ft.

(3) Top width: _____ft.; Bottom width: _____ft.

(4) Grade (slope) of ditch: _____.

(5) If ditch or canal owned and/or operated by an association or company or such other entity, list name of association or company or such other entity: _____.

B. If pipeline:

(1) Type: _____(i.e., aluminum, steel, etc.)

(2) Diameter: _____inches.

(3) Length of pipeline to first place of use: _____ft. and total length of pipeline: _____ft.

(4) Grade (slope) of pipeline: _____.

C. If other, describe: _____

_____.

J. Enlargement(s) of storage reservoir and/or diverting and/or distributing works. N/A

A. Date begun: _____.
(Month/Day/Year)

Date completed: _____.
(Month/Day/Year)

B. Describe details of enlargement(s): _____

_____

C. Dimensions of works as originally constructed and as enlarged: _____

_____

Explanatory

Aboriginal title, Spanish law, Mexican law, Treaty of Guadalupe Hidalgo, Gadsden Treaty, ~~treaties with the Apaches, International law, Tribal law, Reserved rights based on Federal law, Tribal Homeland, State law and Territorial law, Executive Orders, Agreements and Understandings with the United States and Court Decrees.~~

7. The sources of water are the Black, Salt, San Pedro, Gila and San Carlos Rivers, all tributaries thereto and groundwater, whether such sources are on or off the Reservation, including without limitation, hydrologically connected water outside the exterior boundaries of the Reservation providing hydrostatic support for any water which is or would be available to satisfy this Claim. Claimant has made a Reservation wide claim to be satisfied from any and all available water sources. The claim is based on the assumption that all water is of a quality which will satisfy the designated purpose. The San Carlos Apache Reservation is unsurveyed and Claimant does not have a map accurately depicting the boundaries. The boundaries are established by documents listed on pages 20,21

(continued on the next page)

of the Addendum to this Claim. This Claim is based on the information available to the Tribe at the time of filing. The Tribe reserves the right to amend its Claim as more information becomes available and as new and/or different uses of water are proposed or developed.

(If more space is required, attach separate sheet(s)

STATE OF ARIZONA)
)
County of Graham) SS
)

VERIFICATION

San Carlos Apache Tribe of Arizona , Ned Anderson, Sr., Tribal Chairman
(please print Claimant-Affiant's name) (Claimant-Affiant representative's name)

being first duly sworn, deposes and says; That the affiant, or its duly authorized representative, possesses the knowledge and the authorization to execute this verification as to the correctness and truthfulness of the matters set forth in the "Statement of Claimant", except as to those matters alleged upon information and belief, and as to those matters believes them to be true and correct.

San Carlos Apache Tribe of Arizona

By: Ned Anderson, Sr.
Claimant-affiant signature

For Corporations, Partnerships, Associations, etc.

Claimant-affiant representative's signature

Attest:
Claimant-affiant representative's signature

SEAL

Claimant-affiant signature

Subscribed and sworn to before me this 31st day of October, 1985

Notary Public or authorized Officer of the State Land Department

My Commission expires 9-20-87

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46

SPARKS & SILER, P. C.
ATTORNEYS
7503 FIRST STREET
SCOTTSDALE, ARIZONA 85251-4573
602 949-1339

CAREFREE, ARIZONA
SUNDIAL CIRCLE, SUITE 1
PLEASE DIRECT MAIL AND CALLS TO
SCOTTSDALE OFFICE

JOE P. SPARKS
E. DENN & SILER

KEVIN T. TEHAN
MICHAEL G. SHIEL
MARGARET [illegible]
DONALD B. LOEB

November 1, 1985

Hand Delivered

State of Arizona
Department of Water Resources
99 E. Virginia Avenue
Phoenix, AZ 85004

Re: In Re: the General Adjudication of all rights to use water in the Gila River System and Source,
Maricopa County Superior Court No. W-1 (Upper Gila River) -
Claim of San Carlos Apache Tribe of Arizona

Dear Sir:

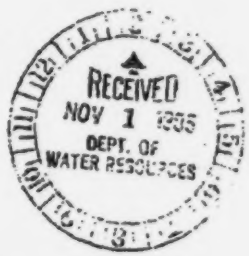
Enclosed for filing is the original of the San Carlos Apache Tribe of Arizona Statement of Claimant and Addendum thereto for the Upper Gila River Watershed. A copy of the Statement of Claim and Form Addendum thereto along with a Notice of Filing has also been filed with the Clerk of the Maricopa County Superior Court.

Yours very truly,

SPARKS & SILER, P.C.

Kevin T. Tehan

Enclosures



ADDENDUM TO SAN CARLOS APACHE TRIBE
STATEMENT OF CLAIMANT

Irrigation

Description of Water Use:

Diversion of water for irrigation of crops including evaporation loss and a one-time filling for storage reservoirs.

Location of Water Use:

The Reservation has been divided into sixteen areas for irrigation. The irrigation requirements are calculated using an average water duty of six acre feet per acre per year* and are described below:

Estimated Annual Water Demand.

Area	Irrigable Acreage	Total Acre Feet
Antelope Flat	583	3,498
Ash Flat	22,406	134,436
Black River Crossing	26	156
Black Rock Wash	738	4,428
Cutter/Ranch Creek	7,316	43,896
Eagle Creek	1,266	7,596
Freezeout	3,671	22,026
Gila River	12,113	72,678
Gilson Wash	4,245	25,470
Goodwin Wash	2,585	15,510
Natural Corral	2,122	12,732

*The water duty for the higher elevations of the Reservation may be as low as 2.8 acre feet per acre using the most efficient distribution system and the water duty for the lower elevations using unlined ditches may be over 8 acre feet per acre. The Tribe has used an average of 6 acre feet per acre.

Point of Pines	6,273		37,638
San Carlos River	4,324		25,944
San Pedro	2,000		12,000
Seven Mile Wash	3,361		20,166
Tufa Stone	4,180		25,080
TOTAL	77,209		463,254 AF

The following reservoir sites are required for storage of water for irrigation.**

Location	Annual Evaporation Loss (Acre Feet)	One-Time Filling Requirement (Acre Feet)
Three reservoir sites on tributaries to the San Carlos River	800	12,000
Black River Pumps	7,400	155,000
Turkey Creek	1,600	23,000
Total	9,800	190,000

The Tribe makes a Claim for water for commercial production of jojoba on the Reservation. Commercial production requires 18 to 24 inches of water per year. The number of acres on the Reservation suitable for growing commercial quantities of jojoba is unknown, however, such acreage may exceed 50,000 acre.

**The water stored in all reservoirs on the Reservation will be used for storage and regulation for irrigation, domestic, municipal, industrial, wildlife, and other beneficial uses. Other reservoir sites are included in the claims for power, recreation, wildlife, and other uses.

Municipal, Industrial, and Domestic

Description of Water Use:

Municipal, industrial, and domestic use.

Location of Water Use:

Throughout the entire San Carlos Reservation.

Estimated Annual Water Demand.

The estimated annual water demand is based on population projections to the year 2030. The estimated annual water demand for municipal, industrial, and domestic use is 5,987 acre feet.

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Stockwater

Description of Use.

Consumption by livestock and evaporation loss from ponds, tanks and other water sources.

Location of Use.

Throughout the entire San Carlos Apache Reservation.

Estimated Annual Water Demand.

The consumptive use by livestock is based on a unit water requirement of 15 gallons per head per day. It is estimated that the Reservation will carry 50,000 or more animal units depending upon climatic and range conditions for a total consumption by livestock of 840 acre feet per year.

There are approximately 500 sources of stock water on the Reservation including approximately 400 stock tanks. Annual stock tank evaporation averages approximately 2,960 acre feet per year.

Additional water sources are needed which, when constructed, will increase future evaporation loss by at least 3,500 acre feet per year.

Consumption by livestock	840
Stock Tank Evaporation	2,960
Evaporation loss for future developments	3,500
Total Acre Feet Per Year	7,300

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Power

1. Hydroelectric.

Description of Water Use:

Non-consumptive diversion and storage of water for hydroelectric power generation. Consumption of water is by evaporation from storage reservoirs. There are four dam sites on the Black and Salt Rivers for hydroelectric power generation. A fifth site at Black River Pumps on the Black River may be used for hydroelectric generation, however, the water will also be used for irrigation and therefore is included in the irrigation section of the Claim. The Tribe also makes a claim for hydroelectric power generation at Elgo Dam (Talkalai Lake) on the San Carlos River and Coolidge Dam (San Carlos Lake) on the Gila River. The evaporation losses for these sites are included in the Wildlife section of the Claim

Estimated Annual Water Demand.

Dam Site	Annual Evaporation (Acre Feet)	One-time Filling Requirement (Acre Feet)
Lower Black River (Unsurveyed T.3 N.,R.26 E.)	5,000	125,000
Carrizo (Unsurveyed T.5 N., R. 19 E.)	186,000	510,000
Knob	2,700	55,000
Walnut Canyon	1,800	35,000
Total	195,500	725,000

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There are two pump storage facilities proposed on the Salt River which have storage reservoirs on the mesa south of the river. These sites are listed below:

Dam Site	Annual Evaporation (Acre Feet)	One-time Filling Requirement (Acre Feet)
South of Walnut Canyon	1,900	38,000
South of Alkali Canyon	1,100	22,000
Total	3,000	60,000

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There is a proposed power plant at Mu' [illegible] the Salt River which would be powered by a diversion of water [illegible]ough a tunnel from the Walnut Canyon dam site. The evaporation loss for the Walnut Canyon Site is included above.

Location of Water Use.

The locations of the uses are described by points along the rivers bordering or within the San Carlos Apache Reservation. The township and range indications are extrapolated.

2. Geothermal

Description of Water Use

Production of electricity from geothermal resources and geothermal space heating and industrial or agricultural heating and drying applications.

Location of Use

Throughout the entire San Carlos Apache Reservation with known hot springs at Bear Hot Springs, Bronco Gulch and Mescal Gulch.

Estimated Annual Water Demand.

The water demand will depend on the application which is unknown at present.

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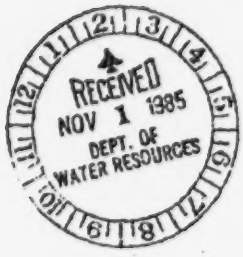


Mining

1. Gypsum

Description of Water Use: Gypsum mine and wall board plant with some gypsum sold for agricultural use.

Estimated Annual Water Demand:

Mine - 50 acre-feet.

Wall Board production - 300 acre-feet.

Total - 350 acre-feet.

2. Coal Fired Electric Generating Power Plant

Description of Water Use: Production of steam to generate electricity. Potential coal mine and sources of mine water including potential slurry water are expected to be located in the Gila River basin.

Estimated Annual Water Demand: 2,500 acre-feet.

3. Copper Processing Plant.

Description of Water Use: Processing of copper ore with associated minerals. Potential copper mines and associated facilities are expected to be located in the Gila River and San Pedro River basins.

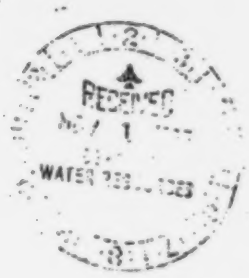
Estimated Annual Water Demand: 15,000 acre-feet.

4. Limestone.

Description of Water Use: Limestone quarry, cement plant, and lime plant. Other possible uses of limestone are for metallurgical flux and road material.

Estimated Annual Water Demand:

Mine	- 10 acre-feet
Cement Plant	- 600 acre-feet
Lime Plant	- 140 acre-feet
Total	- 750 acre-feet



5. Uranium

Description of Water Use: Uranium mine and processing plant.

Estimated Annual Water Demand:

Mine	- 20 acre-feet
Processing Plant	- 330 acre-feet
Total	- 350 acre-feet

6. Other Mineral Resources.

There are numerous other mineral resources within the San Carlos Apache Reservation for which water is claimed including but not limited to, gold, silver, manganese, sand and gravel, gemstones, asbestos, barite, diatomaceous earth, tuff, guano, iron, crushing and benefication of iron ore, refining and production of sulfuric acid and anhydrous ammonia from natural gas, refining and recovery of oil and gas.

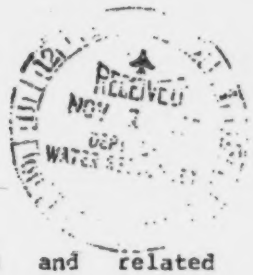
Estimated Annual Water Demand.

Other mineral resources - 20,000 acre feet

Location of Use.

The locations of water uses for mining are unknown at present. Minerals are located throughout the entire San Carlos Apache Reservation.

Total Mining Claim 38,950 acre feet per year



Recreation

Description of Water Use.

Recreational facilities including campgrounds and related facilities described below. The proposed future developments at Seneca, Soda Canyon, and other recreational sites include a motel, rodeo-grounds, softball field, hiking trails, horseback riding facilities, and a golf course.

Location of Use.

The Soda Canyon facilities are located near San Carlos Lake. The Seneca campground and other facilities are located near the town of Seneca adjacent to U.S. Highway 60.

Estimated Annual Water Demand.

	Annual Consumptive Use Acre-Feet
Soda Canyon Recreational Facilities	20
Seneca Campground and other Facilities	14
Proposed Future Developments at Seneca Soda Canyon, and Other Recreational Sites	807
Total	841 Acre Feet

Wildlife

Description of Use.

The wildlife claim is for sufficient water from all sources including lakes, streams, stock ponds, ditches, and irrigated fields, to maintain the wildlife, birds and fish on the Reservation, including evaporation loss from the reservoirs.

Location of Use.

Throughout the entire San Carlos Apache Reservation.

Estimated Annual Water Demand:

Lake Evaporation	Annual Evaporation Loss (Acre-Feet)
Point of Pines, Dry Lake, Salt Shed Tank & Talkalai Lake	2,090
Seneca Lake	90
San Carlos Lake	24,610
***Proposed Lake Sites in Salt River Drainage	3,430
Total	30,220
Consumption by Wildlife	1,000
Total	31,220

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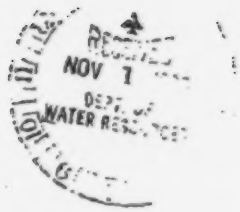
***One-time filling requirement of 15,000 acre feet.



Other Uses

1. Commercial Fisheries.

Description of Use.

Hatching and raising of cold water fish for sale. Consumptive use for warm water commercial fisheries is included with Claims for evaporation loss of reservoirs and stockponds and for irrigation.

Location of Use.

Diversions of water from the Black River for irrigation or other uses would first be cycled through facilities for hatching and raising of cold water fish.

Estimated Annual Water Demand - 540 acre-feet.

2. Forestry.

Description of Use.

Maintenance and development of timber resources. Sawmill, molding mill, chipboard plant, and pulp mill and reforestation.

Location of Use.

The Claimant has operated a sawmill at Cutter, Arizona, however, the locations of proposed future developments are unknown. Forestry resources are located throughout the entire San Carlos Apache Reservation.

Estimated Annual Water Demand.

	Annual Water Requirement
Sawmill	20
Molding Mill and Chipboard Plant	10
Pulp Mill	3,400

Reforestation	500
Total	3,930

The Claim for the Christmas Tree Farm presently operated by the Claimants is included as irrigable acreage.

3. Family Garden Plots.

Description of Use.

Garden plots for family and community use and subsistence.

Location of Use.

Throughout the entire San Carlos Apache Reservation.

Estimated Annual Water Demand.

Based upon one fourth acre per family unit of four with a water duty at 6 acre feet per acre the estimated annual water demand is 10,020 acre feet.

4. Cultural, Religious, and Traditional Use.

Description of Use.

Cultural, religious, and traditional uses, including without limitation arts, crafts, beverage, food, and medicine preparation, and religious and cultural practices.

Location of Use.

Throughout the entire San Carlos Apache Reservation.

Estimated Annual Water Demand.

Consumptive use of water and uninterrupted flow of springs and other water sources with cultural, religious and traditional significance and use to the Tribe.

5. Natural Vegetation.

Description of Use.

Maintenance and enhancement of the natural vegetation.

60

Location of Use.

Throughout the San Carlos Apache Reservation.

Estimated Annual Water Demand.

Precipitation and unobstructed natural run-off.

61

Allotments

Description of Use.

Irrigation, domestic, stockwater, municipal, power, mining, recreation, wildlife, family garden plots, natural vegetation and cultural, religious and traditional uses.

Location of Use.

Trust Patent No.	Location
672734	T6S, R16E, W 1/2, SE 1/4 Section 17.
865346	T6S, R16E, N 1/2, NW 1/4, Section 21.
850802	T7S, R16E, E 1/2, NW 1/4, SE 1/4 and the N 1/2, NE 1/4, SW 1/4, SE 1/4, Section 1.
968676	T6S, R16E, W 1/2, SW 1/4, Section 9.
783802	T6S, R16E, SW 1/4, NE 1/4, Section 17.
746456	T6S, R16E, NE 1/4, SE 1/4, Section 17.
672733	T6S, R16E, E 1/2, SW 1/4, Section 17 and the E 1/2, NW 1/4, Section 20.
741638	T7S, R17E, SW 1/4, SW 1/4, Section 5; SE 1/4, SE 1/4 Section 6; NE 1/4, NE 1/4, Section 7; NW 1/4, NW 1/4, Section 8.
741639	T7S, R17E, NE 1/4, NW1/4 and N 1/2, NE 1/4 and SE 1/4, NE 1/4, Section 8,

Estimated Annual Water Demand

The estimated annual water demand for all allotments for all uses is 4,950 acre feet per year.

63

OBJECTIONS AND RESERVATION OF RIGHTS OF CLAIMANT

The San Carlos Apache Tribe, hereafter the "Tribe" objects to the statement of claimant form used in this adjudication and does not intend by this filing to waive and does not in fact waive any objection, issue or affirmative defense premised upon the deficiencies and omissions of the statement of claimant form which may be relevant or appropriate at any later stage of these proceedings including appeal or review.

The Tribe affirmatively reserves all objections, issues or affirmative defenses to the form used by the State of Arizona and notes, for purposes of this protest, the form required to be used under penalty of forfeiture by the State of Arizona provides no clear means of asserting rights other than those based on state law of prior appropriation.

Without limiting the scope of the previously stated objections, the Tribe specifically objects to any requirement that demands the inclusion of information on past water use since the Tribe's rights are not dependent on such historical use except as any portion of the Tribe's claim may be based on state law.

Nothing in this statement of claim form is or is intended to be an admission on the part of the Tribe that the amount of water or the water uses specified herein are the full and final extent of the Tribe's rights to waters within the applicable "river system and source" as defined by A.R.S. Section 45-251(4) or that the amount of water or the uses for water will not change in the future as the Tribe develops the arts of civilization.

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To the extent that this statement of claimant form may later be construed as a pleading within the scope of Ariz. R. Civ. Pro. Rule 7 as may be applicable to proceedings under A.R.S. Section 45-259, the Tribe affirmatively alleges: accord and satisfaction, arbitration and award, assumptions of risk, contributory negligence, discharge in bankruptcy, estoppel, detrimental reliance, failure of consideration, duress, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, abandonment, non-use, illegal change of use, waiver and any other matter constituting an avoidance or affirmative defense and the Tribe reserves the right to amend to more specificially allege any such defenses if applicable and appropriate to do so.

The amounts set forth in this statement of claimant are free and clear of any set off, debit, adjustment, pro-ration or any other form of reduction whatsoever premised upon any rights to water held by the Tribe and not within the scope of rights within the jurisdiction of the State of Arizona to determine or water received by the Tribe from sources outside the geographical limitations of this adjudication.

Nothing in this statement of claimant form is or is intended to be a waiver of any previous objection made by the Tribe to the jurisdiction of the state of Arizona over the subject matter of these proceedings, the personal jurisdiction over the Tribe or sovereign immunity of the Tribe or any other objection previously made. The Tribe affirmatively reserves all such objections for review by the appropriate court.

Nothing in this statement of claimant form is or is intended to be an admission or acknowledgement by the Tribe of any administrative

or enforcement jurisdiction by the State of Arizona over the Tribe, or the Reservation of the Tribe nor is this claim to be construed as implied consent of the Tribe to the State of Arizona, its employees or agents or any other claimant in this proceeding to enter upon the Reservation of the Tribe.

Nothing in this statement of claim is or is intended to be a ratification or affirmance of any prior action, inaction or failure of the United States of America for or on behalf of the Tribe in the exercise of a trust or other obligations previous to or during the pendency of these proceedings. The Tribe specifically reserves the right to seek relief for or to controvert any such action, inaction or failure should the Tribe deem it necessary to do so at some point in the future.

Without limiting the scope of any previous objection or reservation of rights, the Tribe specifically objects to the content and form of the single page document entitled "Upper Gila River Watershed Superior Court of Maricopa County, Statement of Claimant Federal Reserved Water Rights" hereafter referred to as the "Upper Gila Form" for the following reasons:

1. No prior notice of the proposed consideration by the Court, preparation, adoption, or approval by the Court of the Upper Gila Form was ever provided to the Tribe or its attorneys.

2. The Tribe was given no opportunity to be heard on or to object to the Upper Gila Form. Neither the Tribe or its attorneys were consulted on the use of the Form.

3. The Upper Gila Form is not an authorized Statement of Claimant Form. It is not one of the four Statement of Claimant Forms identified in the summons to appear for Claims in the Upper Gila issued by the Clerk of the Maricopa County Superior Court on September 27, 1984. An Alias

Summons including the Upper Gila Form has not been approved by the Court pursuant to A.R.S. § 45-253 (A) (1) nor has the Clerk issued such a summons to the knowledge of the Tribe.

4. The Upper Gila Form is inconsistent with the requirements for Indian Tribes.

BOUNDARY DESCRIPTION

The following documents establish the exterior boundaries of the San Carlos Apache Reservation:

1. The Reservation was established by Executive Order dated December 14, 1872.

2. Executive Order dated August 5, 1873.

3. Executive Order dated July 21, 1874.

4. Executive Order dated April 27, 1876.

5. Executive Order dated January 26, 1877.

6. Executive Order dated March 31, 1877.

7. Act of Congress of February 20, 1893 (27 Stat. 469).

8. Agreement dated February 25, 1896 between the San Carlos Apache Tribe and the United States, ratified by Act of Congress June 10, 1896 (29 Stat. 3538). The lands described in this Agreement are referred to as the San Carlos Mineral Strip.

9. Executive Order dated December 22, 1902.

10. Order of the Secretary of the Interior dated March 30, 1931.

11. Order of the Secretary of the Interior dated September 19, 1934.

12. Order of the Secretary of the Interior dated June 17, 1963 (28 Federal Register 6408).

13. Order of the Secretary of the Interior dated January 16, 1969 (34 Federal Register 1195).

for the San Carlos Apache Tribe.

15. Other applicable Treaties, statutes, Executive Order and Agreements applicable to the San Carlos Apache Reservation.

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W-3

DEPT. OF WATER RESOURCES

For Departmental Use Only

File No. 30- 64257

Date Filed: 11-1-85

WFN

FEE REQUESTED 2-11-86

STATEMENT OF CLAIMANT FORM FOR OTHER USES[1]

UPPER GILA RIVER WATERSHED UPSTREAM FROM ASHURST-HAYDEN DAM EXCLUDING THE SAN PEDRO RIVER WATERSHED SUPERIOR COURT OF MARICOPA COUNTY

1. Claimant Name: United States of America, Dept.of Interior, Bureau of Indian Affairs
   Claimant Address: _____ City San Carlos
   State: Arizona Zip Code 85550 Telephone 475-2321

2. Basis of Claim:
   - A. ☐ Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No._____
   - B. ☐ Appropriation Right acquired after June 12, 1919. Application No._____, Permit No._____, or Certificate of Water Right No._____
   - C. ☐ Decreed water right. Principal litigants, court, date and case no.: _____
   - D. ☐ Right to withdraw groundwater.
   - E. ☒ Other, describe: Federal Reserve Water Right

   Clerk of the Superior Court Received From D.W.R. FEB 02 1987 Date

3. Claimed Priority Date: Time immemorial (month/day/year)

   C. Ruiz Deputy Clerk

4. Use:
   - A. ☐ Municipal
   - B. ☐ Commercial or Industrial
   - C. ☐ Mining
   - D. ☐ Stockwatering other than from a stockpond
   - E. ☒ Recreation, Fish & Wildlife
   - F. ☒ Other, describe: irrigation; reservoir evaporation

5. Source of Water:
   - A. ☒ Stream: name San Carlos River, tributary to Gila River
   - B. ☐ Spring: name_____, tributary to_____
   - C. ☒ Lake or Reservoir: name Talkalai Lake, tributary to_____
   - D. ☐ Groundwater

6. Legal description of the Point of Diversion: (attach additional sheet if required) (Elgo Dam) unsurveyed
   ¼, SW ¼, NW ¼, Section 32, Township 1 N/S, Range 19 E/W

7. If there are Irrigation, Domestic or Stockpond uses also supplied from the Point of Diversion, describe:
   Lands on San Carlos Indian Reservation

8. Means of Diversion:
   - A. ☐ Instream pump
   - B. ☐ Gravity flow into ditch, canal or pipeline.
   - C. ☐ Well: Arizona State Land Department, Arizona Water Commission or Arizona Department of Water Resources Intent to Drill File No._____
   - D. ☐ Other, describe_____

[1] *See Instructions for explanation of uses in this category*

BEST AVAILABLE COPY

9. **Means of Conveyance:**
   A. ☐ Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: _____
   B. ☒ Other, describe: Stream channel of San Carlos River

10. **Place of Use, if other than point of diversion:** (attach additional sheet if required)
   County _____

Legal Subdivision	Section	Township	Range
_____	_____	____N/S	____E/W
_____	_____	____N/S	____E/W

11. **Claimed Right:**
   A. Maximum Flow Rate: _____ ☐ cubic-feet per second ☐ gallons per minute ☐ Arizona miner's inches
   B. Annual Volume of Water Use: _____ acre-feet
   C. Storage Right: 6000 acre-feet

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s), place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant James H. Stevens
James H. Stevens

14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person? Please call San Carlos Agency Superintendent for appointment.

15. **Attach Filing Fee to Form.** Mail form(s) and fee(s) to: Department of Water Resources, P.O. Box 2920, Phoenix, AZ 85062.

16. **Additional comments:** 1) This is a storage right claim only.

2) Elgo Dam located in SW¼NW¼ S.32, T.1N, R.19E. unsurveyed

(attach additional sheet if required)

17. **Notarized Statement:**
I (We), Bureau of Indian Affairs
the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

James H. Stevens, Area Director

(seal)

My Commission Expires Mar. 14, 1987

My Commission Expires: _____ Notary Public

or, _____
Authorized Personnel of the Department of Water Resources

70

IN THE SUPERIOR COURT

MARICOPA COUTY, STATE OF ARIZONA

IN RE:

THE GENERAL ADJUCICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	Nos. W-1, W-2, W-3 and W-4 Upper Gila River Basin Claims

WATER RIGHTS CLAIM OF THE
UNITED STATES AS TRUSTEE
FOR THE SAN CARLOS APACHE TRIBE

A. Introduction

The attached water rights claim is submitted by the United States of America as trustee for the San Carlos Apache Indian Tribe. This claim is intended to cover that portion of the San Carlos Apache Indian Reservation located within the Gila River Watershed. Claims have already been submitted by the government on behalf of the Tribe in regard to the Salt River and San Pedro river watersheds.

It is the position of the United States that this claim does not in any way effect a waiver of the Tribe's immunity from suit. It is the position of the government that the Tribe's immunity from suit has not been waived by the McCarran Amendment (43 U.S.C. §666). The Tribe can become a party to this proceeding only if it chooses to intervene in its own behalf.

In order to provide some visual representation of the irrigable lands portion of the claim, maps have been attached which indicate the general location of the irrigable lands for which water rights have been claimed herein. However, since the majority of the

irrigation water rights claim involves land which has not been historically irrigated, the maps cannot indicate with precision the areas that will actually be cultivated in the future. Accordingly, it is hereby expressly provided that the claim for the irrigation water right is governed by the amount claimed in that portion of the written claim and is not governed by the maps which are attached to this claim.

B. Legal basis for the claim

The legal basis for this claim is the federal reserved water rights doctrine as recognized by the Supreme Court of the United States. See Winters v. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963), and United States v. Cappaert, 426 U.S. 128 (1978). The claim asserted herein is based on the intention of the Congress and the President to create a homeland for the San Carlos Apache Indians in a geographical area where water "...would be essential to the life of the Indian people and to the animals they hunted and the crops they raised" (Arizona v. California, supra, 373 U.S. at 599), and for the development of the "arts of civilization" (Winters v. United States, supra, 207 U.S. at 576). Through this claim the United States claims sufficient water to provide for the agricultural, recreational, municipal/domestic, industrial, power development, mineral, development, wildlife, stockgrazing and other present and future water uses to fulfill the purposes of the San Carlos Apache Reservation and to maintain the reservation as a permanent tribal homeland for the San Carlos Apache Indians.

C. Priority date for the water rights claimed

The San Carlos Apache Indians have occupied the area of their present reservation and adjacent lands for many hundreds of years. See San Carlos Apache Tribe of Arizona, White Mountain Apache Tribe of Arizona, and Western Apache Indians, et al. v. United States, No. 22-D, 21 Indian Claims Commission 189 (June 27, 1969). Accordingly, this entire water rights claim is made on the basis of a priority date of time immemorial.

The United States government has entered into certain Agreements and Treaties with the Apache Indians including, but not limited to, the Treaty of Santa Fe dated July 1, 1852. That portic of the existing San Carlos Apache Reservation located within the Gila River watershed was delineated and set apart by the federal government on January 31, 1870. The Reservation was confirmed by President U.S. Grant on November 9, 1871. Other Executive Branch actions which affected the creation of the Reservation occurred on September 5, 1871, November 7, 1871, and December 14, 1872. See Kappler, Indian Affairs Laws and Treaties (1904) pp. 810-814.

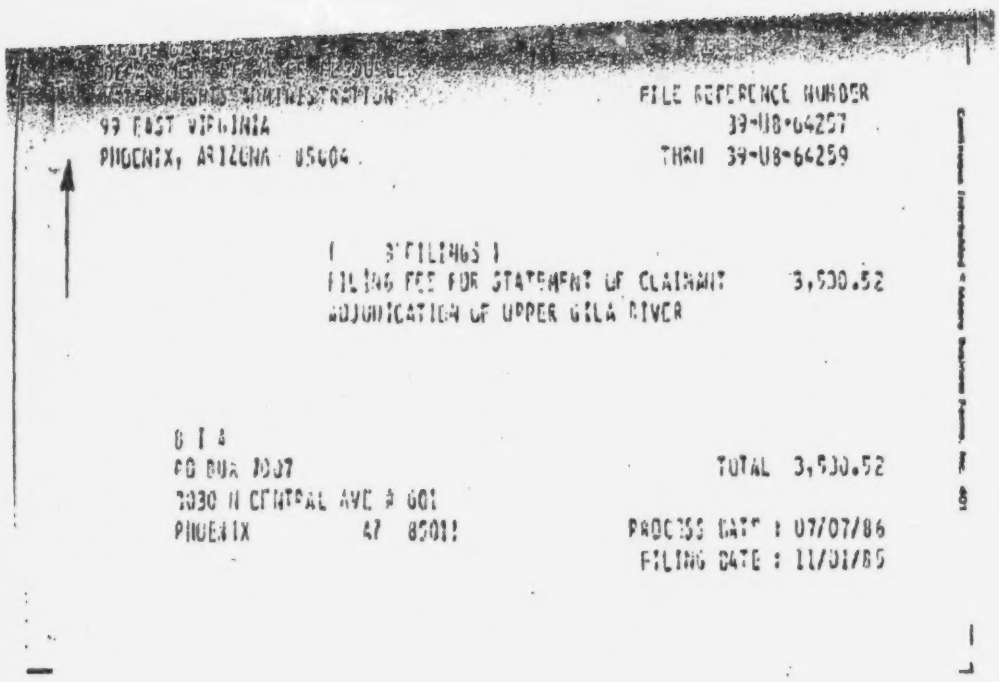
D. Future water uses

A significant portion of the water rights claim asserted herein relates to anticipated future water needs which will be required to make the Reservation a useful and productive homeland for the San Carlos Apache Indians. Due to a variety of circumstances, specific plans and time schedules are not available at this time in relation to the anticipated future uses. When such plans and time schedules become available to the United States, the

government will submit the plans and schedules to the Court.

E. Subsequent revision of claim

This water rights claim is based on the best information available to the United States as of November 1, 1985, and is as accurate and complete as that information allows. However, the United States intends to continue on-the-ground investigations in order to refine existing data. Such refinement may necessitate the amendment of this claim sometime in the future in order to reflect updated information.



DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

FILE REFERENCE NUMBER
39-UB-64257
THRU 39-UB-64259

(3 FILINGS)
FILING FEE FOR STATEMENT OF CLAIMANT 3,930.52
ADJUDICATION OF UPPER GILA RIVER

B I A
PO BOX 7007
2030 N CENTRAL AVE # 601
PHOENIX AZ 85011

TOTAL 3,930.52

PROCESS DATE : 07/07/86
FILING DATE : 11/01/85

74

BEST AVAILABLE COPY

W-3

RECEIVED NOV 1 1985 DEPT. OF WATER RESOURCES

For Departmental Use Only

STATEMENT OF CLAIMANT FORM FOR OTHER USES[1]

FEE REQUESTED 2-11-86

UPPER GILA RIVER WATERSHED UPSTREAM FROM ASHURST-HAYDEN DAM EXCLUDING THE SAN PEDRO RIVER WATERSHED
SUPERIOR COURT OF MARICOPA COUNTY

1. **Claimant Name:** United States of America, Dept. of Interior, Bureau of Indian Affairs
   Claimant Address: _____ City: Coolidge
   State: Arizona Zip Code 85228 Telephone 475-2331

2. **Basis of Claim:**
   A. ☐ Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No._____
   B. ☐ Appropriation Right acquired after June 12, 1919. Application No._____, Permit No._____, or Certificate of Water Right No._____
   C. ☒ Decreed water right. Principal litigants, court, date and case no.: Globe Equity E-59 U.S. Dist. Ct., AZ; United States v Gila Valley Irrigation District, et al
   D. ☐ Right to withdraw groundwater.
   E. ☐ Other, describe:_____

3. **Claimed Priority Date:** Not later than June 7, 1924 (month/day/year) (See Gila Decree)

4. **Use:**
   A. ☒ Municipal
   B. ☒ Commercial or Industrial
   C. ☐ Mining
   D. ☐ Stockwatering other than from a stockpond
   E. ☐ Recreation, Fish & Wildlife
   F. ☒ Other, describe: irrigation, reservoir evaporation, hydro power

Clerk of the Superior Court Received From D.W.R. FEB 0 2 1987 Date
C. Rice Deputy Clerk

5. **Source of Water:**
   A. ☐ Stream: name_____, tributary to_____
   B. ☐ Spring: name_____, tributary to_____
   C. ☒ Lake or Reservoir: name San Carlos, tributary to Gila River mains
   D. ☐ Groundwater

6. **Legal description of the Point of Diversion: (attach additional sheet if required)** (Ashurst-Hayden Dam)
   ¼, SW ¼, NW ¼, Section 8, Township 4 ☐N ☒S, Range ☐E ☒W

7. **If there are Irrigation, Domestic or Stockpond uses also supplied from the Point of Diversion, describe:**
   San Carlos Irrigation Project Lands

8. **Means of Diversion:**
   A. ☐ Instream pump
   B. ☒ Gravity flow into ditch, canal or pipeline.
   C. ☐ Well: Arizona State Land Department, Arizona Water Commission or Arizona Department of Water Resources Intent to Drill File No._____
   D. ☐ Other, describe_____

[1] *See Instructions for explanation of uses in this category*

9. **Means of Conveyance:**
   A. ☒ Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: Gila River channel and diversion at Ashurst-Hayden and Sacaton Dams
   B. ☐ Other, describe:

10. **Place of Use, if other than point of diversion:** (attach additional sheet if required)
   County

Legal Subdivision	Section	Township	Range
		N/S	E/W
		N/S	E/W

11. **Claimed Right:**
   A. Maximum Flow Rate: ☒ cubic-feet per second ☐ gallons per minute ☐ Arizona miner's inches
   B. Annual Volume of Water Use: acre-feet
   C. Storage Right: 1,285,000 acre-feet (Gila Decree)

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s), place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant James H. Stevens
   James H. Stevens

14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person?

15. Attach Filing Fee to Form. Mail form(s) and fee(s) to: Department of Water Resources, P.O. Box 2920, Phoenix, AZ 85062.

16. **Additional comments:** 1) This is a storage right claim only.

2) Coolidge Dam located in NW¼, NW¼, S. 17, T. 3S., R. 18 E. unsurveyed.

(attach additional sheet if required)

17. **Notarized Statement:**
I (We), Bureau of Indian Affairs
the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

James H. Stevens
James H. Stevens, Area Director

(seal)

My Commission Expires Mar. 14, 1987

Karen L. Burgos
Notary Public

My Commission Expires:

or, _____
Authorized Personnel of the Department of Water Resources

77

IN THE SUPERIOR COURT

MARICOPA COUTY, STATE OF ARIZONA

IN RE:

THE GENERAL ADJUCICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	Nos. W-1, W-2, W-3 and W-4 Upper Gila River Basin Claims

WATER RIGHTS CLAIM OF THE
UNITED STATES AS TRUSTEE
FOR THE SAN CARLOS APACHE TRIBE

A. Introduction

The attached water rights claim is submitted by the United States of America as trustee for the San Carlos Apache Indian Tribe. This claim is intended to cover that portion of the San Carlos Apache Indian Reservation located within the Gila River Watershed. Claims have already been submitted by the government on behalf of the Tribe in regard to the Salt River and San Pedro river watersheds.

It is the position of the United States that this claim does not in any way effect a waiver of the Tribe's immunity from suit. It is the position of the government that the Tribe's immunity from suit has not been waived by the McCarran Amendment (43 U.S.C. §666). The Tribe can become a party to this proceeding only if it chooses to intervene in its own behalf.

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B. Legal basis for the claim

The legal basis for this claim is the federal reserved water rights doctrine as recognized by the Supreme Court of the United States. See Winters v. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963), and United States v. Cappaert, 426 U.S. 128 (1978). The claim asserted herein is based on the intention of the Congress and the President to create a homeland for the San Carlos Apache Indians in a geographical area where water "...would be essential to the life of the Indian people and to the animals they hunted and the crops they raised" (Arizona v. California, supra, 373 U.S. at 599), and for the development of the "arts of civilization" (Winters v. United States, supra, 207 U.S. at 576). Through this claim the United States claims sufficient water to provide for the agricultural, recreational, municipal/domestic, industrial, power development, mineral, development, wildlife, stockgrazing and other present and future water uses to fulfill the purposes of the San Carlos Apache Reservation and to maintain the reservation as a permanent tribal homeland for the San Carlos Apache Indians.

C. Priority date for the water rights claimed

The San Carlos Apache Indians have occupied the area of their present reservation and adjacent lands for many hundreds of years. See San Carlos Apache Tribe of Arizona, White Mountain Apache Tribe of Arizona, and Western Apache Indians, et al. v. United States, No. 22-D, 21 Indian Claims Commission 189 (June 27, 1969). Accordingly, this entire water rights claim is made on the basis of a priority date of time immemorial.

The United States government has entered into certain Agreements and Treaties with the Apache Indians including, but not limited to, the Treaty of Santa Fe dated July 1, 1852. That portion of the existing San Carlos Apache Reservation located within the Gila River watershed was delineated and set apart by the federal government on January 31, 1870. The Reservation was confirmed by Presedent U.S. Grant on November 9, 1871. Other Executive Branch actions which affected the creation of the Reservation occurred on September 5, 1871, November 7, 1871, and December 14, 1872. See Kappler, Indian Affairs Laws and Treaties (1904) pp. 810-814.

D. Future water uses

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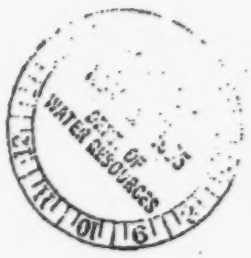
government will submit the plans and schedules to the Court.

E. Subsequent revision of claim

This water rights claim is based on the best information available to the United States as of November 1, 1985, and is as accurate and complete as that information allows. However, the United States intends to continue on-the-ground investigations in order to refine existing data. Such refinement may necessitate the amendment of this claim sometime in the future in order to reflect updated information.



99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

39-UB-64257
THRU 39-UB-64259

| FILINGS |
FILING FEE FOR STATEMENT OF CLAIMANT 3,530.52
ADJUDICATION OF UPPER GILA RIVER

B I A
PO BOX 7007
3030 N CENTRAL AVE # 601
PHOENIX AZ 85011

TOTAL 3,530.52

PROCESS DATE : 07/07/86
FILING DATE : 11/01/85

81

82

-3

For Departmental Use Only

File No. 39- 64 259
Date Filed: 11-1-85
WFN

FEE REQUESTED
2-11-86

STATEMENT OF CLAIMANT FORM
FOR
OTHER USES

UPPER GILA RIVER WATERSHED UPSTREAM FROM ASHURST-HAYDEN DAM EXCLUDING THE SAN PEDRO RIVER WATERSHED
SUPERIOR COURT OF MARICOPA COUNTY

Claimant Name: United States of America, Dept.of Interior, Bureau of Indian Affairs
Claimant Address: 3030 N. Central City Phoenix
State: Arizona Zip Code 85011 Telephone 241-2310

Basis of Claim:

A. ☐ Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No._____
B. ☐ Appropriation Right acquired after June 12, 1919. Application No._____, Permit No._____, or Certificate of Water Right No._____
C. ☐ Decreed water right. Principal litigants, court, date and case no.:_____
D. ☐ Right to withdraw groundwater.
E. ☒ Other, describe: Federal reserved water right (see attached text)

Claimed Priority Date: Time Immemorial (month/day/year)

Use:

A. ☒ Municipal
B. ☒ Commercial or Industrial
C. ☒ Mining
D. ☒ Stockwatering other than from a stockpond
E. ☒ Recreation, Fish & Wildlife
F. ☒ Other, describe: See attached text and claim

Clerk of the Superior Court
Received From D.W.R.
FEB 0 2 1987
Date
Deputy Clerk

Source of Water:

A. ☒ Stream: name See attached claim, tributary to_____
B. ☐ Spring: name_____, tributary to_____
C. ☐ Lake or Reservoir: name_____, tributary to_____
D. ☐ Groundwater

Legal description of the Point of Diversion: (attach additional sheet if required) See attached claim
____¼, ____¼, ____¼, Section____, Township____N/S, Range____E/W

If there are Irrigation, Domestic or Stockpond uses also supplied from the Point of Diversion, describe:

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Instructions for explanation of uses in this category

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   B. ☐ Other, describe:

10. **Place of Use, if other than point of diversion:** (attach additional sheet if required)
County

Legal Subdivision	Section	Township	Range
See attached claim		N/S	E/W
		N/S	E/W

11. **Claimed Right:**
   A. Maximum Flow Rate: ☐ cubic-feet per second ☐ gallons per minute ☐ Arizona miner's inches
   B. Annual Volume of Water Use: 174,526 acre-feet
   C. Storage Right: acre-feet

12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s), place(s) of use and means of conveyance.

13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant James H. Stevens

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15. **Attach Filing Fee to Form.** Mail form(s) and fee(s) to: Department of Water Resources, P.O. Box 2920, Phoenix, AZ 85062.

16. **Additional comments:** This claim by the United States is made on behalf of the San Carlos Apache Indian Tribe for that portion of the San Carlos Indian Reservation located within the Gila River watershed.

(attach additional sheet if required)

17. **Notarized Statement:**
I (We),
the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

James H. Stevens

(seal)

My Commission Expires:

Notary Public

or, Authorized Personnel of the Department of Water Resources

84

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NOV 1 1995 DEPT OF WATER RESOURCES

C. Priority date for the water rights claimed

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WATER RESOURCES

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SAN CARLOS RESERVATION
GILA RIVER BASIN

IRRIGATION USE

Description of Water Use

The irrigation claim is for irrigation of crops.

Location of Water Use

About 12,087 acres within the Reservation are being claimed for irrigation using water from the Gila River Basin. At present, crops are grown in only one of these areas, the San Carlos River. The other ten areas are Antelope Flat, Black River Wash, Cutter Ranch Creek, Eagle Creek, Gilson Wash, Goodwin Wash, Natural Corral, San Carlos River, Sevenmile Wash and Tufa Stone Wash. Approximate locations of potential irrigation projects are as follows:

Area[1/]	Approximate Locations
Antelope Flat	T1S, R20E, Secs. 7, 8, 17, 18, 19, and 30.
Black River Wash	T5S, R22E, Secs. 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.
Cutter Ranch Creek	T1S, R17E, Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18. T1S, R16E, Secs. 1, 2, 3, 10, 11 and 12.
Eagle Creek	T1S, R28E, Secs. 6, 18, and 19.
Gilson Wash	T1S, R18E, Secs. 5, 8, and 17.
Goodwin Wash	T4S, R22E, Secs. 26, 34, and 35. T5S, R22E, Secs., 2, 3, 4, 8, 9, 17, 18, and 19. T5S, R21E, Secs. 23 and 24.
Natural Corral	T1N, R18E, Secs. 2, 11, 14, and 23. T2N, R18E, Sec. 2.

Area[1]	Approximate Locations
San Carlos River	T1S, R18E, Secs. 24, 25, and 26. T2S, R18E, Secs. 1, 12, and 13.
Sevenmile Wash	T1S, R18E, Sec. 1. T1N, R18E, Secs. 7, 8, 18, 20, 21, 27, 28, and 34. T1N, R17E, Secs. 11 and 12.
Tufa Stone Wash	T1S, R18E, Secs. 1 and 2. T1N, R18E, Secs. 18, 19, 30, 31, 32, and 33. T1N, R17E, Secs. 23, 24, and 25.
Gila River	Various locations along the Gila River[2]

1/ Locations of arable lands in these ten areas are shown on Exhibit sheets 1 through 23.

2/ Agricultural/Engineering studies have not been completed for this use; therefore, maps showing areas of use are not presently available.

Source and Location of Diversions

The sources are Gila River, tributaries of the Gila River and/or ground water in the Gila river Basin. Points of diversion are listed in the following table:

Area	Points of Diversion (Unserveyed)
Antelope Flat	Ground Water
Black River Wash	Ground Water
Cutter Ranch Creek	Ground Water
Eagle Creek	T1S, R28E, Sec. 6
Gilson Wash	Ground Water
Goodwin Wash	Ground Water
Natural Corral	Ground Water
San Carlos River	Ground Water
Sevenmile Wash	Ground Water
Tufa Stone Wash	T1N, R18E, Sec. 38 (plus ground water)
Gila River	Various points of Diversion

Estimated Annual Water Demand	Annual Diversion Requirements Acre-Feet/Year
Antelope Flat	1,396
Black Rock Wash	3,659
Cutter Ranch Creek	7,998
Eagle Creek	680
Gilson Wash	6,483
Goodwin Wash	4,978
Natural Corral	1,982
San Carlos River[1/]	10,733
Sevenmile Wash	8,996
Tufa Stone Wash	10,127
Gila River[2/]	72,678
Total Agricultural Claim	129,709

1/ Includes 159 acres of presently irrigated land plus 400 acres prepared for irrigation.

2/ The claim for 72,678 acre feet of water is for the irrigation of approximately 12,113 acres of irrigable land along the Gila River. Until the federal court with jurisdiction over the Gila Decree of 1935 finally determines the scope of that decree and the *res judicata* effect of that decree, the United States considers this claim to be an appropriate part of the Tribe's reserved water right claim. The claim for 72,678 acre feet of water from the Gila River includes the right recognized in the Gila Decree for 6,000 acre feet of water for 1,000 acres of land.

SAN CARLOS APACHE RESERVATION
GILA RIVER BASIN

RECREATIONAL WATER USE

Description of Water Use

Present recreation use is for camping, hunting, fishing, and evaporation from four lakes; Point of Pines Lake, Dry Lake, Salt Shed Tank, and Talkalai Lake. Future anticipated use is for selected recreational sites throughout the basin.

Location of Water Use	Estimated Legal Description (Land Unsurveyed)
Point of Pines Lake	T1S, R25E, Secs. 4, 5, 8, and 9
Dry Lake	T1S, R24E, Secs. 12 and 13
Salt Shed Tank	T1S, R26E, Sec. 32
Talkalai Lake	T1N, R18E, Secs. 33 and 34

Future use is for sites throughout the basin.

Estimated Annual Water Demand

Present Recreational Water Use	2090 AF/yr.
Future Additional Recreation Use	2000 AF/yr.
Total Potential Recreation Use	4090 AF/yr.

3M036.296/0425c

SAN CARLOS APACHE INDIAN RESERVATION

GILA RIVER BASIN

DOMESTIC, MUNICIPAL AND LIGHT INDUSTRY

Description of Water Use

Domestic use (for homesites and farmsteads), municipal use and light industrial use.

Location of Water Use

At present, domestic and municipal use is scattered throughout the Gila Basin portion of the Reservation. Future additional domestic, municipal and light industrial uses would occur throughout the Reservation in the Gila basin.

Source and Location of Diversion

Sources are the Gila River and tributaries thereto and/or ground water in the Gila River basin. Points of Diversion are located throughout the entire portion of the Reservation within the Gila River basin.

Estimated Annual Water Demand

Present domestic water use is minor. The anticipated domestic, municipal and light industrial uses (including garden plots) for the entire Reservation are 5,935 AF. It is unknown at this time what portion of the water supply will come from water supplies of the Gila River basin.

SAN CARLOS APACHE RESERVATION

GILA RIVER BASIN

POTENTIAL MINERAL USE

1. Coal

Description of Water Use: Use would be for coal mines, processing facilities and coal fired plant.

Location of Water Use: Probable location of mines and plants is in T5S, R18E and T5S, R19E.

Source and Location of Diversion: Gila River. The probable diversion would be T3S R19E.

Estimated Annual Water Demand: 2500 AF/yr.

2. Copper

Description of Water Use: Use would be for mining and processing copper ore.

Location of Water Use: Probable locations of mines are in T4S, R16E, T5S, R16E, and T45 R19E.

Source of Location of Diversion: Gila River. The probable points of diversion would be T3S, R19E and/or T4S, R16E.

Estimated Annual Water Demand: 5000 AF/yr.

3. Gypsum

Description of Water Use: Gypsum mine and processing plants.

Location of Water Use: Probable location of mine and plant would be T6S, R16E.

Source and Location of Diversions: Gila River. Probable points of diversion are T4S, R16E.

Estimated Annual Water Demand: 350 AF/yr.

4. Limestone

Description of Water Use: Limestone quarry, cement plant, and lime plant. Other possible uses of limestone are for metallurgical flux and road material.

Location of Water Use: Probable location of quarry, cement, and lime plants is in T2S, R19E and T2S, R20E, and T4S, R18E.

Source and Location of Diversion: Gila River. The probable point of diversion would be T3S, R20E.

Estimated Annual Water Demand: 1500 AF/yr.

5. Uranium

Description of Water Use: Uranium mine and processing plant.

Location of Water Use: Probable location of water mine and plant is T4S, R18E.

Source and Location of Diversion: Gila River. Probable point of diversion would be T3S, R17E.

Estimated Annual Water Demand: 350 AF/yr.

3. Other Mineral Resources

There are indications that several other mineral resources may be present within the Reservation. These mineral resources include asbestos, iron, copper, and oil and gas. Potential water use could be significant if substantial quantities of one or more of these resources are found to be present on the Reservation.

Description of Water Use: Mine use in connection with asbestos and iron, crushing and benefication of iron ore, refining and recovery of oil and gas, mining and processing of copper, and production of sulfuric acid and anhydrous ammonia from natural gas.

Location of Water Use: Water use could occur throughout the entire Reservation.

Source and Location of Diversion: Gila River.

Estimated Annual Water Demand: 20,000 acre-feet

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Summary of Potential Water Use for Mineral Development Gila River Basin

Mineral	Annual Water Use (Acre-feet)
Coal	2,500
Copper	5,000
Gypsum	350
Limestone	1,500
Uranium	350
Other Minerals	20,000
Total Mineral Claim	29,700[1/]

1/ Water source will be the Gila River or tributaries thereto. Until the federal court with jurisdiction over the Gila Decree of 1935 finally determines the scope of that Decree and the res judicata effect of that Decree, the United States considers this claim to be an appropriate part of the Tribe's reserved water right claim.

SAN CARLOS APACHE INDIAN RESERVATION

GILA RIVER BASIN

STOCKWATER USE (Including Wildlife)

Description of Water Use

Consumption by livestock, wildlife, and evaporation from stock tanks and troughs (and consumption by wildlife).

Location of Water Use

Locations of existing facilities are listed in Table 1. This list is not necessarily complete. Additional future facilities will be located throughout the entire portion of the Reservation within the Gila River Basin.

Source and Location of Diversions

Sources are tributaries of the Gila River throughout the Gila Basin. Points of diversion are located throughout the entire portion of the Reservation within the Gila River Basin.

Estimated Annual Water Demand

Present stockwater use	3637 AF/Yr
Additional future stockwater use	1455 AF/Yr[1/]
Total Potential Stockwater Use	5092 AF Yr

1/ Also claimed is 4000 AF for the initial filling of the future stockponds.

Table 1

San Carlos Indian Reservation
Gila River Basin
Existing Stock Tanks

Stock Tank Name	USGS 7.5' Quadrangle	Location Latitude	Location Longitude	Surface Area (Acres)
1. Juniper	Ash Creek Ranch	33°22'00"	110°06'00"	10
2. Green Mtn.		21 00	03 00	12
3. Headquarters		21 30	02 00	2
4. Headquarters		21 00	01 00	1
5. Beef Corral		19 30	02 30	10
6. Bone		17 00	05 30	3
7. Yellow Jacket		17 00	05 00	1
8. Military		16 00	05 30	1.5
9. Hooker Gap		17 30	01 00	11
10. Kidde	Ash Creek NE	29 30	05 00	6
11. Armstrong		24 30	06 30	4
12. Deadman		24 00	01 00	1
13. Branaman	Branaman Spring	21 00	14 00	2
14. Salt Box		20 30	11 00	1.5
15. Boni		21 00	8 30	17
16. Lost Man		19 30	9 30	1.5
17. Monument		15 30	12 00	2
18. Rocky	Bronco Gulch	29 30	13 30	4
19. Freezeout		26 30	07 30	5
20. Summit		25 30	13 30	3
21. South Summit		24 00	14 00	2.5
22. Red Rock		24 00	12 00	2.5
23. Lower White Ledge		23 30	10 00	1.5
24. Bronco		23 00	8 30	3.5
25. White Ledge		23 00	10 00	1
26. Upper Junction		23 00	12 00	3
27. Lower Junction		22 30	13 00	6
28. Glade	Brushy Canyon	40 00	27 00	7
29. Spur		39 30	27 00	2
30. Trap		39 00	28 00	1.5
31. New		38 00	27 30	1
32. Chalk	Bucket Mtn.	21 00	33 30	1
33. Chalk #2		21 00	33 00	2
34. Copper Mtn.		19 30	32 30	2
35. Pipeline		19 30	31 30	4
36. Pipeline #2		19 00	31 30	4
37. 70		20 00	35 30	3.5
38. Bucket Mtn.		19 30	34 00	1.5
39. Bucket #2		18 30	32 00	2.5
40. Hog Mtn.		16 30	33 30	7
41. Hog Mt #2		17 30	36 00	4.5
42. Gray Mare		15 30	33 00	.5
43. Bridge Washer		17 00	31 30	1.5
44. Copper Mtn #2		19 30	33 00	1
45. Champion	Cammerman Wash	28 30	41 00	.5

Stock Tank Name	USGS 7.5' Quadrangle	Location Latitude	Location Longitude	Surface Area (Acres)
46. Champion #2	Cammerman Wash	33°30'00"	110°37'30"	2
47. Champion #3		30 00	37 30	2
48. Jeep		28 30	39 00	1
49. Granite #1		27 30	39 30	.5
50. Granite #2		27 00	38 00	1
51. Granite #3		26 30	39 30	1.5
52. Butta		25 30	41 00	.5
53. CK		24 30	41 00	1
54. Hayes		24 30	41 30	4
55. Ladd		24 30	38 00	1.5
56. N. Alder Creek	Cassadore Spring	36 00	25 00	2
57. Oak Creek		33 30	23 30	1
58. Bull Pasture		32 30	27 30	1
59. Keam Spr		32 00	26 00	1
60. Cassadore		31 30	24 30	1.5
61. Turkey Roost	Chiricahua Butte	32 30	09 00	4
62. Dry Mesa	Chrome Butte	31 00	38 30	2
63. Cutter	Cutter	19 30	42 00	3
64. Copper Hills		17 00	42 00	.5
65. Coyote Hole		17 30	38 00	3
66. Hole in the Rock		16 00	41 30	.5
67. Branch Creek		15 00	43 00	2.5
68. North	Dourine Canyon	28 30	30 30	.5
69. South		28 30	32 00	.5
70. Granite Butte		28 00	37 00	1.5
71. Sisto		27 00	31 30	3.5
72. Circle 7		27 00	34 30	3
73. Steer		25 30	33 30	11
74. Dourine		25 30	32 00	1.5
75. Dourine #2		24 30	33 00	2.5
76. Quail Mesa		25 30	30 30	2
77. Metate		24 00	36 00	.5
78. Base Line		22 30	31 00	8
79. Cold Spring Camp	Ft. Thomas 3NE	14 30	109°46 00	1.5
80. Horse Camp #1		13 30	48 00	3.5
81. Horse Camp #2		14 00	48 00	1
82. Horse Camp #3		15 00	47 30	2
83. Seven Mile #2		13 30	51 30	1.5
84. Seven Mile #3		14 00	50 30	1
85. Allen		13 00	50 30	4
86. Tank 32		12 30	46 30	3.5
87. Tank 33		11 30	45 00	2
88. Paymaster #1		12 30	51 30	6.5
89. Paymaster #2		10 30	50.00	1
90. Paymaster #3		11 00	49 30	1

Stock Tank Name	USGS 7.5' Quadrangle	Location Latitude	Location Longitude	Surface Area (Acres)
91. Bonita #1	Ft. Thomas 3NE	33°10'00"	109°45'30"	16
92. Bonita #2		11 30	47 30	4.5
93. Bonita #3		12 30	48 30	12
94. Bonita #4		13 00	50 00	4.5
95. Lasley		11 00	51 30	5.5
96. Steer Pasture		10 00	49 00	2
97. Slaughter		8 30	48 00	2.5
98. Ash	Ft. Thomas 3NW	15 00	54 00	11
99. Ninemile		14 30	55 30	5.5
100. Ninemile #2		14 30	55 30	2.5
101. Washout		15 00	56 00	18
102. Sevenmile		12 30	53 30	6.5
103. Sevenmile #4		12 00	55 30	1.5
104. Midnight	Ft. Thomas 4SE	06 30	32 00	11
105. Lower Windy		06 00	34 00	2
106. Dons		04 30	37 30	2
107. Rubble Dam		03 00	36 00	1
108. Driftfence	Ft. Thomas 4SW	07 00	40 30	2
109. Geronimo Dam		06 00	44 30	9
110. Deadman		05 00	43 30	4
111. Pima Gap		05 00	42 30	5
112. Airplane Canyon		05 00	38 30	.5
113. Bear Canyon		02 30	41 30	1
114. Oak Trough		02 00	39 30	.5
115. Bryce Horse Camp	Ft. Thomas 4NW	13 30	44 30	1.5
116. Keays		11 00	44 00	3.5
117. Jess		10 30	41 30	2
118. Cowboy		9 30	43 30	6.5
119. Georges Well		9 00	42 00	.5
120. Skeleton		10 00	37 30	2
121. Oak Grove		7 30	43 00	2
122. Sycamore	Ft. Thomas 4NE	11 00	33 00	1.5
123. Windy		08 00	35 00	3
124. Loafer	Freezeout Mtn.	32 30	34 00	5
125. Dry Prong		32 00	31 00	4
126. Cox Corral		31 00	32 00	3.5
127. Bar F Bar	Mescal Warm Spring	14 00	110°42 00	1.5
128. Rock Gate		13 00	41 00	.5
129. Wob		13 00	41 00	.5
130. Big Rock		12 30	42 00	.5
131. Dick Spring #1		13 00	39 00	1.0
132. Dick Spring #2		13 00	38 30	1.0
133. Elk		12 30	42 00	.5
134. Naltazan		12 30	41 00	1.0
135. Hill Detention		12 30	40 30	.5
136. Triplets		22 00	21 30	.5
137. Triplets Road		22 00	20 30	2
138. Switchback		21 30	22 00	.5
139. Hackberry #1		21 00	20 00	1
140. Hackberry #2		20 00	19 30	.5
141. Salt Creek		21 30	16 30	3
142. In the Corner	Natanes Mtns. NW	24 00	109°59 00	1.5

Stock Tank Name	USGS 7.5' Quadrangle	Location Latitude	Location Longitude	Surface Area (Acres)
143. Holdup	Natural Corral	33°29 00	110°28 00	4
144. Natural Corral		29 00	26 00	1.5
145. Black Mesa		27 30	23 30	1.5
146. Natural		25 00	26 30	2
147. Agency		24 30	29 30	1
148. Spreader		23 30	29 30	3
149. E. Salt Shed	Point of Pines East	21 00	109°38 30	23
150. Pine Flat		20 30	38 00	6.5
151. Maggie Jones		18 00	38 00	9
152. Point of Pines Charco		22 30	44 00	6
153. University		21 30	44 00	3.5
154. Prairie		22 00	42 00	4
155. Picket Corral		19 00	39 30	13
156. Point of Pines		20 30	45 00	2
157. Picket Trail		20 30	42 30	.5
158. 6045		20 30	41 30	.5
159. Cienega Creek		18 00	42 30	2
160. Dry Lake	Point of Pines West	21 00	51 00	2.5
161. Lookout		21 30	49 30	1
162. Nantac #1		20 30	47 00	1
163. Nantac #2		19 30	46 30	.5
164. Ash Flat #1		18 30	51 00	1
165. Ash Flat #2		18 30	51 00	.5
166. Ash Flat #3		18 00	50 00	.5
167. Headquarters #1		16 30	49 00	15
168. Headquarters #2		17 00	49 30	1.5
169. Arsenic Tubs #1		15 30	50 30	.5
170. Arsenic Tubs #2		16 00	49 00	1.5
171. Arsenic Tubs #3		15 30	49 00	1
172. Bull Spring #1		16 00	46 30	1
173. Bull Spring #2		16 00	48 00	4.5
174. Bull Spring #3		16 00	47 30	1
175. 5301		15 00	46 00	2.5
176. Tufa Stone	San Carlos	22 30	110°29 00	14.5
177. Maltazan		21 30	29 00	.5
178. Peridot Flat		20 00	29 00	.5
179. Trainer		20 00	23 30	.5
180. Hollywood Bowl		16 30	24 00	1.5
181. Sawmill #1	San Carlos	16 30	25 00	.5
182. Sawmill #2		17 30	29 30	.5
183. Sixmile		15 00	29 30	.5
184. Lime	San Carlos 3SW	05 30	25 30	.5
185. Horse Basin		04 00	25 00	1
186. Dewey Flat	San Carlos 3NE	10 00	15 00	6
187. Bone Spring	San Carlos 4NW	14 30	11 00	.5
188. Yellowjacket		14 00	10 00	.5
189. Beargrass	San Carlos 4SW	01 30	12 00	3.5
190. R 21		04 00	09 00	2.5
191. Win		06 00	09 00	.5
192. Willow Mtn.	Sawbuck Mtn.	26 30	109°38 00	2
193. Steer Pasture		25 00	42 30	13
194. Turkey		23 00	42 30	20

ARIZONA DEPT. OF WATER RESOURCES 1985

Stock Tank Name	USGS 7.5' Quadrangle	Location Latitude	Location Longitude	Surface Area (Acres)
195. Willow	Sawbuck Mtn.	33°24 30	109°38 00	2.5
196. Brushy Basin	Sevenmile Mtns	33 00	110°32 00	2
197. Sevenmile		32 00	29 30	2.5
198. Red Rock		30 30	33 00	.5
199. Antelope	Sontag Mesa	29 00	22 00	2
200. Blue Pasture		29 30	16 30	2
201. Rocky Gulch		29 30	15 30	5
202. Concrete		27 30	18 30	1
203. Big Brushy		22 30	19 30	16
204. Little Brushy		24 00	18 00	4.5
205. Rodeo	Tule Tubs	22 00	109°59 30	3.5
206. Soldier Hole		20 30	57 00	9
207. Pasture 5 Charco		20 30	56 00	2
208. Tule		20 30	55 00	1
209. Tule Well		19 00	53 00	2
210. 5035		19 30	59 30	.5
211. 5086		19 30	58 00	.5
212. Ninemile		18 30	56 30	2
213. Ash Creek #1		17 00	54 30	1
214. Ash Creek #2		17 30	54 30	.5
215. Ash Creek #3		17 30	53 30	.5
216. Ash Creek #4		17 00	52 30	.5
217. Hooker Gap Charco		16 00	58 30	1
218. 5050		17 00	56 30	1.5
219. Packsaddle	Willow Mtn.	25 30	35 00	2
220. Windy Bob		25 00	34 00	1
221. Jimmy Land		23 30	33 00	1
222. 6083		23 00	37 00	1
223. Fourmile	Willow Mtn. SE	19 30	35 00	7.5
224. Night Trap		19 30	32 00	3
225. Dry Trap		18 00	34 00	1
226. Fourmile Mesa		18 00	32 30	1
227. Burro		17 00	31 00	1.5

102

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ADMINISTRATION
99 EAST VIRGINIA
PHOENIX, ARIZONA 85004

RECEIPT

FILE REFERENCE NUMBER
39-08-64257
THRU 39-08-64259

(3 FILINGS)
FILING FEE FOR STATEMENT OF CLAIMANT 3,530.52
ADJUDICATION OF UPPER GILA RIVER

B I A
PO BOX 7007
3030 N CENTRAL AVE # 601
PHOENIX AZ 85011

TOTAL 3,530.52

PROCESS DATE : 07/07/86
FILING DATE : 11/01/85

Globe Equity No. 59

In the District Court of the United States In and for the District of Arizona

THE UNITED STATES OF AMERICA

vs.

GILA VALLEY IRRIGATION DISTRICT, ET AL.

DECREE ENTERED JUNE 29, 1935

STIPULATION FOR AND CONSENT TO THE ENTRY OF A FINAL DECREE
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
ARIZONA IN THE CASE OF UNITED STATES OF AMERICA, V. GILA
VALLEY IRRIGATION DISTRICT, ET AL.

Come now the parties hereto, either in person or by their solicitors, and inform the Court that they have reached a settlement of the issues in this cause and have adjusted and settled their respective claims as between each other; that they have set up in the within and foregoing decree the respective rights of all parties hereto, and request the Court to adopt said decree as its finding herein and that it be entered as its final decree in this cause, settling and adjudicating the rights of the parties hereto.

For The United States of America
HOMER CUMMINGS,
The Attorney General.
HAROLD L. ICKES,
The Secretary of the Interior.
CLIFTON MATHEWS, F. K. FLEDD,
Clifton Mathews, Esq., June 24, 1935.
United States Attorney, Solicitors for the plaintiff. April 11, 1938.
GERTRUDE M. CONVERSE,
Gertrude M. Converse, Solicitor for the San Carlos
Irrigation and Drainage District, defendant heretofore
ranged in interest, on the side of the plaintiff,
and for the following other defendants:

Archie L. Bartlett; Fred H. Bassler; Maude H. Bassler; George W. Burgess; Louis Cathemer; Maud A. Converse; Elmore Curry; Roland Curry; Salvadore S. Felix; Juan S. Felix; Manuel S. Felix; Pedro S. Felix; J. J. Fraser; F. P. Jamieson; J. C. Jamieson; W. D. Kidder; Edith Knappenberger; Frank Knappenberger; Ed Lacy; Elizabeth H. Martin; Rolland H. Moorehouse; L. S. McKnight; H. H. McKnight; Leon M. Howell; George W. Smith; S. M. Southworth; Dugald Stewart; James S. Treat; Louise H. Trihell; and Dan A. Trihell.

104

KIBBEY, BENNETT, GUST, SMITH AND ROSENFELD.

by J. L. GUST,

Kibbey, Bennett, Gust, Smith and Rosenfeld,

Solicitors for the following defendants:

D. E. Adams; D. T. Adams; L. A. Adams; Joseph Alder; H. L. Alexander; Ephriam J. Allen; J. A. Allen; John W. Allen; Louis Allen; S. E. Allen; A. A. Allred; Della Allred; Edith M. Allred; Elden Allred; E. M. Allred; J. M. Allred; Mrs. Maude Allred; Myron J. Allred; Phoebe Allred; Ruth Allred; Casario Alvillar; N. J. Anderson; Tom Aranda; Pamlo Bailey; Mrs. V. M. Baker; W. S. Baker; George P. Ballard; Felix Baros; Pablo Barela; Mrs. Sarah Barney; Mrs. Sophia Barney; W. T. Barney; E. D. Barry; Innocente Bartolda; Severa Bartolda; Thomas Batty; Walter Batty; C. M. Beal; J. M. Beal; Mrs. J. S. Beale; William M. Beebe; Frank V. Beers, Administrator of the Estate of E. M. Beers, deceased; Thomas M. Bell; W. A. Bennett; William Bigler; John Bilby; John Billingsley; Myron Bingham; J. M. Bingham; Lester Bingham; M. William Bingham; Warren Bingham; G. R. Bingham; D. V. Birdno; Mrs. John J. Birdno; Mary Lorraine Birdno; E. V. Black; Ethel Blake; B. M. Blair; Ben Blake; Ed Blake; T. B. Blake; Mrs. Thomas Blake; T. F. Boggs; W. P. Bollinger; Charles Boote; C. B. Boren; William Boren; H. C. Boyle; Mrs. Artie Branam; L. S. Branam; Wallace Branch; Brown Canal Company; Grant D. Brown; Jared T. Brown; L. J. Brown, Jr.; William Brunson; Adelaide M. Bryce; A. J. Bryce; David J. Bryce; E. P. Bryce; G. A. Bryce; Heber B. Bryce; J. W. Bryce; M. A. Bryce; Mrs. Sarah Bryce; W. C. Bryce; William E. Bryce; E. G. Bullard; Charles Burrell; George Burrell; Manuel Burrell; T. D. Burton; J. D. Busby; Mary Butler; W. P. Butler, Jr.; Edward Carpenter; Frank Carpenter; John Carpenter; Lester Carpenter; William Carpenter; Mrs. Josue Carranco; V. Carranco; Antone Carreon; Albert Carter; Alof P. Carter, Administrator of the Estate of E. L. Carter, Deceased; W. A. Carter, Sr.; Ethel B. Carter; W. R. Chambers; J. A. Chapman; W. W. Chapman; Pablo Chavarria; P. Chendilla; D. W. Cheney; Mrs. A. W. Chesley; J. E. Chesley; M. R. Chiarson; Antone Christensen; Victor Christensen; Citizens Bank; Edward M. Claridge; Charles S. Clark; H. J. Clark; W. A. Clark; H. S. Clarke; Asahel Clifford; Elijah Clifford; Henry Clifford, Sr.; L. A. Clifford; N. H. Clifford; B. P. Cluff; Benjamin P. Cluff, Administrator of the Estate of Joseph Cluff, deceased; Mrs. J. E. Cluff; John Cluff; Evans Coleman; H. L. Colvin; John D. Colvin; Colvin-Jones Canal Company; C. S. Cooney; C. S. Cooney, Administrator of the Estate of P. H. Hoyu, deceased; C. L. Combs; George Combs; M. V. Combs; Isaac Combs; N. E. Combs; William Combs; Grady Coppedge; James Corder; Joan C. Cooper; Henry Crabbe; Mrs. N. E. Craig; C. E. Crandall; R. D. Crandall; C. L. Crawford; H. W. Crockett; W. W. Crockett; A. J. Curtis; Amnon Curtis; Curtis Canal Company; Cleve Curtis; Don Curtis; Mrs. Elizabeth Curtis; Emery Adalbert Curtis; Eugene Curtis; Ezra Curtis; Mrs. Frank Curtis; H. M. Curtis; Mrs. Virginia Curtis; L. C. Cutler; Charles E. Dallas; Mrs. Julia Daly; Willis K. Daly; Mrs. Hester Demres; John R. Davidson; A. B. Decker; L. D. Decker; Eric G. Deller; Mrs. Henry Dial; Guy Dimon; A. J. Dodge; Dodge-Hovels Canal Company; David Dodge; Mrs. Layman Dodge; Thomas Dodge; J. E. Domingue; Clare Domingue; Mrs. Lily Duke; J. W. Earvin; Benjamin Estelo; Rumaldo Elias; H. B. Elledge; Davidson Ellsworth; Ernest Ellsworth; Francis Ellsworth; William Ellsworth; Mrs. Charlotte F. Elmer; J. H. Elmer; Mrs. Sarah S. Elmer; Mark D. Empie; Miguel Encinas; Catalina Entzminger; Mrs. Belle Epley; John C. Epley; P. Estrada; Austin Evans; George

105

C. Evans; E. C. Eyring; Amadeo Fajardo; C. E. Farley; J. A. Farley; Luther Farley; A. N. Farmer; F. A. Farrell; C. J. Farrington; J. F. Felshaw; W. P. Ferguson; F. M. Ferrell; C. S. Ferrin; Ether S. Ferrin; Robert Ferrin; F. M. Ferrin; Jose Figueroa; J. H. Fine; Seth P. Fleisher; Elias Flores; Nora Floyd; Joseph E. Follett; T. A. Follett; L. L. Follett; W. L. Follett; George Foote; Orson P. Foote; W. R. Foote; Fort Thomas Consolidated Canal Company; Hugh Foster; John N. Foster; J. A. Foster; Karl Foster; Fourmen Canal Company; Mrs. Clara Fourmen; J. L. Fouts; Augustin Franco; Pedro Franco; J. L. Freeman; M. S. Freeman; Alma Freestone; Charles E. Freestone; R. L. Freestone; P. H. Freudenthal; Archie Fuller; Lawrence Fuller; Thomas F. Fuller; William Fuller; Millard Fyffe; E. College; Casimiro Garcia; G. Garcia; Jesus Garcia; Jose B. Garcia; Juan Garcia; Marajilda Garcia; Rafael Garcia; Tomas Garcia; Victoriano Garcia; Thomas Gardner; Ramon Gauna; Fernando Gervantes; Charles Gleitz; Gila Valley Irrigation District; Albert Gillespie; Edward L. Gillespie; James Gillespie; Shell Gillespie; William H. Gillespie; Forrest Gilliland; J. R. Gilmore; J. R. Golding; Mrs. S. C. Gonzales; Mrs. Francis Goodeau; George A. Gourley; Graham Canal Company; Hattie Graham; Epitacio Granillo; J. L. Green; Reece D. Green; J. W. Greenhalgh; R. M. Greenhalgh; Christino Grijalva; J. M. Grijalva; Marajildo Grijalva; C. J. Grover; Hugh C. Hansen; E. E. Hancock; Ira Hancock; Jesse A. Hancock; H. B. Harms; A. Harper; John H. Harper; Dolbert Hatch; George L. Hatch; G. J. Hatch; Elijah Hawkins; J. N. Hawkins; C. D. Haynie; L. B. Head; George W. Healy; C. M. Hendricks; San Henry; Spence C. Heywood; John Hicks; C. M. Higgins; Heber M. Higgins; Mrs. Clara Hinton; Calvin Hocker; F. H. Holiday; Scott Holladay; S. N. Holman; J. M. Holyoak; William H. Holyoak; Mrs. Arthena Hoopes; Bert Hoopes; H. E. Hoopes; John L. Hoopes; George A. Hoope; E. D. Householder; E. D. Howard; J. M. Howard; Joseph Howard; S. D. Howard; Almera Hubbard; Thomas H. Hundley; A. C. Hunt; Sarah A. Hunt; Mrs. S. J. Hunter; Mrs. W. E. Irvin; George P. Jacobsen; Martin Jacobsen; P. J. Jacobsen; S. L. Jenkins; S. P. Jenkins; James Jensen; David Johns; Charles F. Johns; D. L. Johns; J. C. Johns; L. A. Johns; W. A. Johns; Mrs. William Johns; D. C. Johnson; Norman J. Johnson; P. Johnson; Orlando Jolly; James E. Jones; David Jurado; Leo Kniffer; P. M. Kelly; A. J. Kempton; Ann B. Kempton; Nell Kempton, Administratrix of the Estate of A. N. Bryce, deceased; Calvin I. Kempton; Fred Kempton; Heber Kempton; Ira N. Kempton; Mrs. Margaret N. Kempton; R. M. Kempton; Donald Kennedy; J. D. Kennison; Charles Kerby; George Killian; Heber C. Kimball; Spencer Kimball; Thomas B. Kimball; F. E. Kirkpatrick; Charles Kruger; Cora Kruger; E. M. Leabeon; A. C. Lamoreaux; Guy W. Lamoreaux; R. D. Lamoreaux; Beatrice Larsen; Charles S. Larsen; C. S. Larsen; Emil Larsen; Ephriam Larsen; James M. Larsen; Joe Larsen; Lehi Larsen, Jr.; Marcel Larsen; Mildred B. Larsen; Mrs. Olivea Larsen; Orvil Larsen; William Larsen; Alex Layton; Charles M. Layton; C. M. Layton, Jr.; M. W. Layton; Leslie W. Layton; M. M. Layton; Oscar C. Layton; R. C. Layton, Jr.; Roy A. Layton; Amy T. Leavitt; Claude M. Lee; J. D. Lee; J. Y. Lee; Marion Lee; Mrs. W. A. Lewis; Mrs. Minia Lindsey; Al Linee; Joseph M. Linee; Milton Linee; W. A. Linee; Charles Luster; R. L. Wallister; D. C. McBride; Ether McBride; James A. McBride; Laura McBride; P. M. McBride; P. M. McBride, Jr.; W. E. McBride; Mrs. Laura McCallom; C. J. McElroy; Martha McElroy; A. F. McEwan; E. W. McEwen; M. P. McEwen; Virgil R. McEwen; Thomas McGuire; A. G. Mack; C. M. Mack; Henry M. Mack; J. A. Mack; J. H. Mack; William S. Mack; Robert Mackey; Abran Madrid; James Mallon; W. J. Mallon; Angus Maloy; G. B. Maloy; M. D. Maloy; Clark Mangum; S. Marcus; S. S. Marshall; W. G. Marshall; Clarence Martin; J. B. Martin; J. S. Martin; Mrs. W. F. Martin; Juan Martinez; C. V. Massey; J. T. Massey; Mrs. L. A. Massey; George A. Mathews; Simon Mathews; C. A. Matthews; Mrs. Chloe Matthews; D. H. Matthews; Eliza Matthews; Jane L. Mattice; John W. Mattice; Lewis P. Mattice; Ben Mavee; Kimball Maxfan; Mrs. F. M. Medhurst; Miguel Meza; Manuel Mendez; Dennis O. Merez; Gerald Merrill; H. M. Merrill; Martha A. Merrill; P. C. Merrill; P. C. Merrill, Administrator of the Estate of Joe Penayl, deceased; P. M. Merrill; S. A. Merrill; Miles

106

Hesslinger; Louis Michelena; Mrs. M. Michelena; Mrs. J. S. Miles; C. W. Miller; Sisto Molina; Francisco Montez; Jesus Montez; Montezuma Canal Company; E. E. Montierth; George Montierth; Leslie Montierth; M. C. Montierth; Wendell Montierth; Edward Moody; Edwin Moody; J. M. Moody; Winford Moody; J. R. Moore; Jose Morales; Mrs. Belle Morris; Cicero Morris; E. M. Morris; Frank Morris; George Albert Morris; John M. Morris; Robert Morris; William Morris; M. Mortensen; C. M. Motes; D. T. Motes; Ernest Motes; P. L. Motes; Anna M. Moyes; Joseph Moyes; J. R. Mullen; Aron T. Nelson; L. A. Nelson; W. L. Nelson; H. L. Norton, Jr.; H. L. Norton, Sr.; J. E. Norton; P. A. Norton; S. M. Norton; William R. Norton; John Nulton; J. M. Nuttall; Braulio Ochoba; Elam Olsen; Victorino Olivas; W. Ollerton; Oscar Olsen; M. Ortiz; Elsie L. Overly; J. T. Owens, Jr.; O. E. Owens; Mrs. C. R. Pace; Mrs. Lenbelle Pace; W. W. Pace; Ada Packer; E. K. Packer; Joaquin Padilla; Mrs. Marcelina Padilla; E. Palmer; I. J. Palmer; Isaac O. Palmer; J. I. Palmer; Lee L. Palmer; Mrs. Nancy Palmer; Ray Palmer; Van D. Palmer; George O. Peck; William A. Peck; Calista B. Peel; Mabel Perkins; Juvenal Perules, Administrator of the Estate of Diana De Leon, deceased; Maranda Perkins; Jesse Peters; Alma Peterson; P. O. Peterson; Wilfred Peterson; E. C. Phillips; Jesse C. Phillips; Rodger Phillips; W. A. Pitt; Ben T. Platt; W. E. Platt; E. M. Plumb; Henry E. Plumb; J. M. Plumb; S. V. Pollock; A. T. Pollock; James H. Porter; S. V. Porter; H. A. Posy; W. A. Posy, Administrator of the Estate of Orson Elliott, deceased; D. T. Preston; M. F. Preston; W. F. Preston; W. J. Preston; Harriett Pulsipher; J. E. Pulsipher; Jesse B. Quinn; Anastacio Quiroz; D. Raper; B. O. Rapier; Miles Reay; Robert E. Reed; Sarah E. Reed; Mrs. E. R. Reed; T. J. Rex; Carlysle Reynolds; J. E. Reynolds; J. F. Rhinehart; W. C. Richards; George F. Richards; Gilbert Richardson; Rebecca Richardson; Sarah L. Richardson; Lito Rios; W. H. Roach; I. P. Robinson; Charles Rogers; David Rogers; H. P. Rogers; Joseph Rogers; Mrs. Louisa Rogers; A. Rohner; C. H. Rose; Nicholas J. Roseberry; Expedion Sedilla; C. B. Sale; Ethlon Saline; John Saline; Roy Saline; W. D. Saline; Jose Sanora; Abel Sanchez; Adiel Sanchez; Daniel Sanchez; Eliseo Sanchez; F. Sanchez; Isias Sanchez; Manuel Sanchez; D. W. Sanders; George Sanders; San Jose Canal Company; Clarence Scarlett; J. W. H. Scarlett; L. B. Scarlett; W. F. Scarlett; J. E. Schurtz; S. E. D. Sears; Andres Serna; Santos Serna; Mrs. John Shields; A. J. Shifflet; J. S. Shifflet; R. N. Shipp; Francis M. Skinner; Marani Skinner; Mrs. Martha Skinner; A. A. Smith; Mrs. D. E. Smith; E. D. Smith; H. L. Smith; J. W. Smith; Joanna Smith; L. W. Smith; M. M. Smith; R. A. Smith, Sr.; Mrs. W. R. Smith; Mrs. J. B. Smithson; Smithville Canal Company; Charles F. Solomon; J. W. Sowell; S. A. Sowell; E. M. Spafford; W. O. Spear; Mrs. C. F. Stanley; Lee M. Straten, Administrator of the Estate of Mrs. M. A. Bell, deceased; Albert Stephens, M. W. Stevenson; T. J. Steward; Pratt Stewart; John Stowe; Brigham Stowell; Mathews Stuart; E. P. Stuesser; W. R Summers; D. V. A. Talley; James M. Talley; J. T. Talley; T. Hugh Talley; Van Talley; M. V. B. Talley; H. M. Tate; F. R. Taylor; John E. Taylor; L. M. Taylor; Sarah Taylor; William C. Taylor; William M. Taylor; F. M. Temple; S. B. Tenny, Jr.; Alva Thatcher; L. M. Thatcher; Tidwell Canal Company; Ida Tidwell; John Tidwell and E. L. Tidwell, Jr., Administrators of the Estate of E. L. Tidwell, deceased; George A. Todd; John T. Traylor; N. O. Tuttle; Frank M. Tyler; Oscar Tyler; William O. Tyler; M. P. Tryon; Union Canal Company; H. C. Usher; The Valley Bank & Trust Company; George Van Cassig; Harry Van Order, Administrator of the Estate of Harry Van Order, deceased; Antonio Vasquez; Jose Varela; Emula Viola; Jose Villareal; W. R. Waddell; Jerome Walker; J. P. Walker; Charles Wamsley; Mrs. J. C. Wamsley; Mattie Wamsley; William Wamsley; Mrs. M. E. Warner; Henry A. Waters; Charles Watson; Lorenzo Watson; Fred Weichtal; Fred Webb; J. D. Webb; F. A. Webster; O. F. Webster; William Webster; A. E. Weech; Adam Welker; Arthur Welker; C. D. Welker; J. A. Welker; R. A. Welker; Willard Welker; A. T. West; John West; B. F. Whitmer, Sr.; B. F. Whitmer, Jr.; Mrs. Mildred Whitmer; Fred M. Wieser; H. P. Wild; A. A. Wilkins; Mrs. Charlotte Wilkins; Dan Williams; S. O. Williams; Isaac Williamson; T. L. Willis; J. M. Wilson; Mrs. Virgie R. Wilson; Mrs. W. A. Wilson; Alcorn Winsor; F. M. Woodward; W. A. Woolsey; Carrie B. Yett; and Dan Young;

J. C. Anglin; Pedro Bertolds; George A. Bigler; J. Bingham; Alef F. Carter; W. A. Carter, Jr.; Edgar H. Cheeley; Church of Jesus Christ of Latter Day Saints; Benjamin F. Cluff, Administrator of the Estate of Phoebe Cluff, deceased; W. D. Cluff; County of Graham, State of Arizona; Joseph Greenhalgh; Annie B. Hancock; M. W. Hancock; Zeb Ison; S. L. Johns; H. H. Korby; A. O. Lasoreaux, Jr.; Layton Corporation of the Church of Jesus Christ of Latter Day Saints; Art Lee; Henry Limas; George Clyde Mathews; Fred H. Mitchell; E. R. Mullen; Robert L. Nash; Lloyd Norton; Mrs. E. Olsen; Pima Corporation of the Church of Jesus Christ of Latter Day Saints; Pima Townsite; Mrs. Mattie Prina; Charles M. Pursley; George Reynolds; Mrs. Nancy Reynolds; David L. Ridgeway; Pedro Ruiz; Town of Safford; Safford School District No. 1, County of Graham, State of Arizona; School District No. 7, County of Graham, State of Arizona; School District No. 8, County of Graham, State of Arizona; School District No. 11, County of Graham, State of Arizona; School District No. 12, County of Graham, State of Arizona; School District No. 31, County of Graham, State of Arizona; George R. Shurtz; Townsite of Solomonville; Sunflower Canal Company; A. V. Tate; Town of Thatcher; O. F. Webster, Administrator of the Estate of Thomas C. Webster, deceased; Mrs. M. C. White; Nephi Williams; Mrs. C. H. Young; and Evan B. Zollinger.

H. A. ELLIOTT, by A. R. LYNCH,

A. R. LYNCH,

H. A. Elliott and A. R. Lynch,

Solicitors for the following defendants:

J. L. Aker; Albert Canal Company; H. Albert; Mrs. Eliza Alexander; H. H. Allred; Hans Anderson; T. J. Anderson; H. H. Angle; T. H. Arnett; Albert L. Barber; E. G. Barlow; J. R. Beavers; Florentino Billalba; Billingsley Extension Canal Company; B. F. Billingsley; Black & McCleskey Canal Company; W. Bleinstein; Silas Bradshaw; T. J. Brannon; C. M. Brooks; M. H. Brooks; R. W. Brooks; W. W. Brooks; J. H. Brown; S. A. Brown; T. W. Brown; Nellie E. Buck, Administratrix of the Estate of David Buck, deceased; J. C. Burleson; David F. Campbell, Jr., Mary E. Campbell; J. E. Cardon; J. W. Carter; Mrs. Tom Carter; Ypolita Casarillo; Mrs. Maggie Cauthen; A. G. Cheatham; Betty Marsh Cheatham; H. V. Cheatham; I. N. Cheatham; Mary Ann Cheatham; S. C. Cheatham; J. M. Chilton; L. T. Christenson; R. F. Cloudt; M. A. Clouse; Mrs. Jas. I. Cole; G. W. Collins; Calasenaro Canal Company; Cooper & Windham Canal Company; Cooper & Windham Extension Canal Company; Alice H. Cooper; George H. Cooper; George H. Cooper, Jr., Administrator of the Estate of George Cooper, deceased; Nugent Cooper; J. L. Crabtree; F. M. Craig; H. C. Crawford; J. H. Cready; F. M. Crockett; Mrs. M. J. Daniels; E. G. Davidson; David Davis; E. Day; Mrs. M. A. Dean; Carl M. Donaldson; Duncan Canal Company; Duncan Union High School District, Sam Duncan; Byron Eahole; M. B. Echols; Joseph C. Elledge; R. E. Elledge; B. H. Elledge; C. I. Elmer; John Evans; Anna F. Fearin; J. W. Feele; S. A. Foster; W. F. Foster; J. R. Fowler; Ernesto Francesa, Administratrix of the Estate of Frank Francesa, deceased; Franklin Irrigation District; R. N. Friestone; J. B. Fullerton; B. J. Gale; Mrs. E. A. Gale; I. B. Gale; Otto Gale; W. T. Gale; James A. Gamble; F. H. Gault; P. A. Gill; Ambra Gilliland; J. M. Gilliland; R. C. Gilliland; Emil Girard; Trivio Gonzales; H. Grady; Jean Hagan; H. B. Harris; M. L. Harris; Waide Harris; C. Lyna Hatch; J. L. Henderson; C. C. Hester; O. L. Hunt; Floyd Hightower; C. P. Hill; J. W. Hill; Nellie R. Hoen; C. F. Houlihan; Rachel Jensen; R. T. Johns; Delbert Johnson; G. W. Johnson; Thomas H. Johnson; F. W. Jones; John B. Jones; Mary Jane Jones; Parley P. Jones; T. Y. Jones; Willard E. Jones; Culver Kartchner; Mrs. S. L. Kemp; Richard Kirtland; A. T. Layton; A. N. Livvix; W. W. Lloyd; Anna M. Lunt; Edward Lunt; George A. Lunt; G. V. Lunt; Heston Lunt; Owen Lunt; P. L. Lunt; Randall Lunt, Administrator of the Estate of Jasper Gale, deceased; R. H. Lunt; W. V. McCarty; J. F. McGrath; R. J. McLaren; M. J. Mabin; William Manske; C. C. Martin; J. A. Martin; J. H. Merriam, Executor of the Estate of Alice E. Day, deceased; E. A. Merrill; Pooley F. Merrill; Orson A. Merrill; T. S. Merrill; R. E. Miller; Jesse A. Mitchell; Moddie Canal Company; Robert M. Montgomery; Theodore M. Moody; R. C. Moore; Hans Mortensen; Hiram K. Mortensen; J. Alfred Mortensen; Peter Mortensen; N. T. Nealey; L. D. Meyers; L. C. Meyers; W. F. Meyers; M. J. Munn; T. A. Munn; J. P. Oberholzer; O. C. Odell; James Opie; Nancy C. Pace; W. C. Packer; C. C. Passmore; E. C. Payne; M. M. Payne; Junius E. Payne; Leslie B. Payne; W. U. Phillpott; C. Pirtle; Mrs. M. E. Pittman; C. W. Quinn; Margarete I. Ragsdale; Nance E. Ragsdale; Mrs. Ethel Rainbolt; Oscar Rainville; O. Reyes; Ralph Richardson; Rebecca Richardson; Sarah L. Richardson; Orson J. Richens; J. R. Robbs; Ernest V. Romney; Eugene Romney; Julius Romney; P. E. Rose; W. T. Sanders; K. M. Schade; Frank Schultz; School District No. 2, County of Hidalgo, State of New Mexico; School District No. 7, County of Hidalgo, State of New Mexico; Judy Scott; Brooks Scott; Seaton Canal Company; R. Sexton; Dolores B. Shirk; Laura Short; Shriver Ditch Company; W. F. Shriver; Mrs. E. M. Simmons; Jesse B. Sims; Simclair Realty Company; Henry L. Smith; J. O. Smith; V. Soto; Emma Spoon, Administratrix of the Estate of J. M. Spoon, deceased; A. L. Stewart; M. B. Stewart; Mrs. R. S. Stewart; George M. Stinson; W. P. Stover; Nicholas Suarez; Florence R. Swafford; Sunset Canal Company; Charles Tallow; Sam R. Tilley; W. D. Tucker; George Utter; Valley Canal Company; Virden Irrigation District; Peter Vahline; Alvin Warner; J. L. T. Watters; B. T. Whipple; Neat White; Joe Whittridge; M. W. Wilkey; D. E. Wilkins; E. J. Wilkins; J. D. Wilkins; Lile Williams; Ray O. Williams; Mrs. T. M. Williamson; B. A. Wilson; George A. Wilson; Page S. Windham; M. C. Wright; George M. Wyatt; York Canal Company; and York Cattle Company;

109

W. E. Bowers; J. E. Payne, Trustee, Church of Jesus Christ of Latter Day Saints; A. C. Crowell; M. H. Jensen; Milton H. Jensen; A. E. Keller; Maude Larsen; Mitchel McDonald; O. Mortensen; Amanda Nations; M. D. Patten; C. Q. Payne; Helen A. Payne; E. W. Richens; N. Richens; School District No. 27, County of Greenlee, State of Arizona; Nancy A. Smith; and E. Thygerson.

GIBBS AND GIBBS, BY S. M. GIBBS,

Gibbs and Gibbs, Solicitors for the defendant T. H. B. Glassgie.

BAKER AND WHITNEY, BY A. B. BAKER,

Baker and Whitney, Solicitors for the defendant Arizona Eastern Railroad Company.

W. S. NORVIEL,

W. S. Norviel, Esq., Solicitor for the following defendants: Catherine A. Norviel; Helen Slaughter, and H. D. Thornton.

FLOYD H. STAHL,

Floyd H. Stahl, Esq., Solicitor for the following defendants: John H. Dennison; Pearl Dennison; Stowe Phelps; and O. I. Purdy.

CHALMERS, FENNEMORE & NAIRN, BY H. M. FENNEMORE,

Chalmers, Fennemore and Nairn, Solicitors for the following defendants:

Nevada Consolidated Copper Company; Ray Consolidated Copper Company; and H. M. Fennemore, and Kennecott Copper Corporation.

LEO J. HOLSWORTH

Leo J. Holsworth, Esq., Solicitor for the defendant Joseph J. Anderson.

111

CHAS. H. REED,

Charles H. Reed, Esq., Solicitor for the following defendant:

Town of Florence.

D. J. BAUGHN,

Otis J. Baughn, Esq., for himself and as Solicitor for

The following defendants:

Margaret P. Brown; Estate of Dora M. Clark; Mira B. Doran; Linna J. Fulton; William C. Knight; Rafael G. Larona; Lola LeBaron; H. H. McNeil; Helen S. Sheafe; Charles M. Sheafe; James S. Sheafe.

ROBERT DENTON,

Robert Denton, Esq., for himself and as Solicitor for

the following defendants:

Florence-Casa Grande Motor Users Association; Mark Twain Clemans; Earl C. Clemans; Edith W. Clemans; Hazel H. Clemans; Winnefred W. Clemans; W. J. Clemans, Jr.

SIDNEY SAPP,

Sydney Sapp, Esq., Solicitor for the following defendants:

E. B. Newman, Administrator of the Estate of H. H. Sorrow, deceased; E. W. Newman.

The following defendants sign for themselves individually.

ERNEST W. McFARLAND,

Ernest W. McFarland.

CRADY L. HERRING,

Crady L. Herring.

GEORGE M. BROCKWAY,

George M. Brockway.

PETER D. OVERFIELD,

Peter D. Overfield.

112

Filed June 29, 1935.

J. LEE BAKER, Clerk,

United States District Court for the District of Arizona.

By WM. H. LOVELESS, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT OF ARIZONA

IN EQUITY

NO. E-39-CLORE

UNITED STATES OF AMERICA

Plaintiff,

v.

D. E. Adams; S. T. Adams; L. A. Adams; J. L. Aker; Albert Canal Company; H. Albert; Joseph Alder; Mrs. Eliza Alexander; H. L. Alexander; Ephriam J. Allen; J. A. Allen; John W. Allen; Lewis Allen; S. E. Allen; A. A. Allred; Celia Allred; Edith W. Allred; Eldon Allred; E. M. Allred; J. W. Allred; Mrs. Maude Allred; M. M. Allred; Myron J. Allred; Phoebe Allred; Ruth Allred; Socorio Alvillar; American Smelting & Refining Company; A. A. Anderson; Hans Anderson; H. J. Anderson; John H. Anderson; Joseph J. Anderson; T. J. Anderson; R. H. Angle; J. C. Anglin; Mary A. Antonoli; Tom Aranda; Arizona Eastern Railroad Company; Fred T. Armstead, Administrator of the Estate of Elizabeth Schultz, deceased; T. H. Arnett; Fannie Bailey; Estate of Walter A. Bailly, Homer H. Martin, Administrator; J. P. Baker; Mrs. V. M. Baker; W. S. Baker; George P. Ballard; Henry Bamesberger; Albert L. Barber; Felix Barela; Pablo Barela; Ruth R. Barham; E. C. Barlow; Mrs. Sarah Barney; Mrs. Sophie Barney; W. T. Barney; E. C. Barry; Archie L. Bartlett; Fanny Hoover Bartlett; Innocenio Bartolda; Severa Bartolda; Fred H. Bassler; Madelene Bassler; Maude M. Bassler; Thomas Batty; Walter Batty; Otis J. Baugh; C. M. Beal; J. H. Beal; Mrs. J. S. Beals; J. R. Beavers; Albert C. Beckon; Grace A. Beckon; William M. Beebe; Frank V. Beers, Administrator of the Estate of R. H. Beers, deceased; Thomas H. Bell; Charles F. Bennett; Jarvus D. Bennett; W. A. Bennett; D. Bertoglio; Pedro Bertolda; George A. Bigler; William Bigler; John Silby; Florentino Billaba; B. F. Billingsley; Billingsley Extension Canal Company; John Billingsley; Myrum Bingham; J. Bingham; J. H. Bingham; Lester Bingham; R. William Bingham; Warren Bingham; W. A. Bingham; D. W. Birdno; Mrs. John J. Birdno; Mary Lorraine Birdno; Black & McCluskey Canal Company; E. W. Black; Edmil Blain; Frances D. Blair; W. M. Blair; Ben Blake; Ed Blake; I. B. Blake; Mrs. Thomas Blake; W. Bleinstein; Clifton Bogard; T. F. Boggs; W. F. Bolliger; Charles Boots; C. B. Boren; William Boren; W. E. Bowers; H. G. Boyle; C. D. Bradley; Ida M. Bradley; John R. Bradshaw; Silas Bradshaw; Mrs. Artie Branan; L. S. Brannman; Wallace Branch; T. J. Brannon; Ira S. Brayton; Esther A. Brockway; George M. Brockway; Marshall F. Brockway; C. M. Brooks; M. H. Brooks; R. W. Brooks; W. W. Brooks; Brown Canal Company; Charlotte Hall Brown; Elizabeth Brown; Gratz D. Brown; Jasred T. Brown; J. H. Brown; J. P. Brown; L. J. Brown, Jr.; Margaret P. Brown; S. A. Brown; Sarah B. Brown; Thresa Hall Brown; T. B. Brown; Estate of W. F. Brown, P. D. Overfield, Administrator; William Brunson; Adelaide M. Bryce; A. J. Bryce; David J. Bryce; E. P. Bryce; G. A. Bryce; Heber B. Bryce; J. W. Bryce; R. A. Bryce; Mrs. Sarah Bryce; W. C. Bryce; William E. Bryce; Hollie E. Buck, Administratrix of the Estate of David Buck, deceased; John J. Bugge; E. C. Bullard; George W. Burgess; J. C. Burleson; Charles Burrell; George Burrell; Manuel Burrell; Lee Robinson Burris; John W. Burris; T. D. Burton, J. D. Busby; Mary Butler; W. F. Butler, Jr.; L. B. Cadwell; David F. Campbell, Jr.; Mary E. Campbell; J. E. Cardon; Edward Carpenter; Frank Carpenter; John Carpenter; Lester Carpenter; William Carpenter; Mrs. Jesus Carrasco; V. Carrasco; Antone Carreon; Albert Carter; Alof P. Carter; Alof P. Carter, Administrator of the Estate of E. L. Carter, deceased; Ethel B. Carter; J. B. Carter; Mrs. Tom Carter; W. A. Carter, Jr.; W. A. Carter, Sr.; Casa Grande Valley Bank; Ypolita Cascarilla; Lewis Catheser; Mrs. Maggie Cauthen; Mike Celaya; W. R. Chambers; J. A. Chapman; W. W. Chapman; John B. Charlton, Administrator of the Estate of W. S. Charlton, deceased; A. D. Cheatham; Betty Marsh Cheatham; E. V. Cheatham; I. N. Cheatham; Mary Ann Cheatham; S. C. Cheatham; P. Chesdilla; D. W. Chesley; Mrs. A. W. Chesley; Edgar H. Chesley; J. E. Chesley; Pablo Chevarria; J. K. Chilton; H. R. Chlarson; Albert J. Christensen; Antone Christensen; L. T. Christensen; Victor Christenson; Church of Jesus Christ of Latter Day Saints; Citizens Bank; Edward M. Claridge; Charles S. Clark; Estate of Dora M. Clark; H. J. Clark; W. A. Clark; H. S. Clarke; Earl C. Clemans; Edith M. Clemans; Hazel H. Clemans; Mark Twain Clemans; Winnefred M. Clemans; W. J. Clemans, Jr.; M. P. Clements; Mrs. Charles E. Cleveland; Asabel Clifford; Elijah Clifford; Henry Clifford, Sr.; L. A. Clifford; W. H. Clifford; R. F. Cloudt; M. A. Clouse; B. F. Cluff;

113

Benjamin F. Cluff, Administrator of the Estate of Joseph Cluff, deceased; Benjamin F. Cluff, Administrator of the Estate of Phoebe Cluff, deceased; Mrs. J. E. Cluff; John Cluff; W. D. Cluff; Mrs. Jas. I. Cohn; Evans Coleman; C. W. Collins; H. L. Colvin; Colesnore Canal Company;John D. Colvin; Colvin-Jones Canal Company; Inez H. Conrad; C. S. Conway; C. S. Conway, Administrator of the Estate of F. S. Hayo, deceased; Hazel A. Converse; C. L. Coombs; George Coombs; H. V. Coombs; Isaac Coombs; N. E. Coombs; William Coombs; Grady Coppedge; James Corder; Alice M. Cosper; George M. Cosper; George M. Cosper, Jr., Administrator of the Estate of George Cosper, deceased; John C. Cosper; Nunnett Cosper; Cosper & Windham Canal Company; Cosper & Windham Extension Canal Company; Henry Crabbs; J. L. Crabtree; F. M. Craig; Mrs. W. E. Craig; C. E. Crandall; R. D. Crandall; W. C. Crawford; C. L. Crawford; J. H. Grady; F. M. Crockett; H. W. Crockett; W. W. Crockett; Thomas A. Crow; Eldora Curry; Roland Curry; A. J. Curtis; Aaron Curtis; Curtis Canal Company; Cleve Curtis; Don Curtis; Mrs. Elizabeth Curtis; Emery Adelbert Curtis; Eugene Curtis; Ezra Curtis; Mrs. Frank Curtis; M. M. Curtis; Mrs. Virginia Curtis; L. C. Cutler; Charles E. Dallas; Mrs. Julia Daly; Willis M. Daly; Mrs. Hester Damron; Mrs. M. J. Daniels; E. C. Davidson; Jennie Davidson; John M. Davidson; David Davis; E. Day; A. B. Decker; Z. B. Decker; Mrs. M. A. Dees; Etta C. Deller; John M. Dennison; Pearl Dennison; Robert Denton; Robert Denton, Administrator of the Estate of George F. Gallagher, deceased; Mrs. Henry Dial; Guy Dixon; Maurice Dodd; A. J. Dodge; Dodge-Nevada Canal Company; David Dodge; Mrs. Lyman Dodge; Thomas Dodge; J. M. Dominguez; Clare Dominguez; Carl M. Donaldson; Mina B. Doran; Mrs. Lily Duke; Duncan Canal Company; Gus Duncan; Duncan Union High School District; J. W. Earven; Tracy Eastman; Benjamin Echols; Byron Echols; M. B. Echols; Rosolda Elias; H. B. Elledge; Joseph C. Elledge; R. E. Elledge; W. H. Elledge; Christeball C. Ellis; Davidsel Ellsworth; Ernest Ellsworth; Francis Ellsworth; William Ellsworth; Mrs. Charlotte P. Elser; C. I. Elser; J. H. Elser; Mrs. Sarah S. Elser; Frank C. Elwell; Mart D. Empie; Miguel Encinas; Catalina Entzminger; Mrs. Belle Epley; John G. Epley; Joe Eray; Jesus Espinosa; Jose T. Espinosa; P. Estrada; Austin Evans; George C. Evans; John Evans; E. C. Eyring; Amadeo Fajardo; C. E. Farley; J. A. Farley; Luther Farley; A. M. Farmer; F. A. Farrell; C. J. Farrington; Anos F. Fearin; Juan S. Felix; Manuel S. Felix, Pedro S. Felix; Salvadore S. Felix; J. W. Felshaw; H. N. Fennemore; M. P. Ferguson; F. M. Ferrell; C. E. Ferrin; Ether S. Ferrin; Robert Ferrin; W. M. Ferrin; Fidelity Savings & Loan Association; Jose Figueroa; J. H. Fine; First National Bank of Florence; C. A. Fitzgerald; Seth P. Fletcher; Florence-Casa Grande Water User's Association; Town of Florence; Elias Flores; Nora Floyd; Joseph E. Follett; I. A. Follett; L. L. Follett; W. L. Follett; George Foote; J. W. Foote; Orson P. Foote; W. R. Foote; Fort Thomas Consolidated Canal Company; Hugh Foster; J. A. Foster; John H. Foster; Karl Foster; S. A. Foster; W. F. Foster; Fourness Canal Company; Mrs. Clara Fourness; J. L. Foutz; J. R. Fowler; Ernesta Francese, Administratrix of the Estate of Frank Francese, deceased; Augustin Franco; Pedro Franco; Franklin Irrigation District; J. J. Fraser; Jesse D. Freeman; J. L. Freeman; W. S. Freeman; Alma Freestone; Charles E. Freestone; R. L. Freestone; P. H. Freudenthal; R. H. Friestone; Archie Fuller; Lawrence Fuller; Thomas F. Fuller; William Fuller; J. B. Fullerton; Linda J. Fulton; May E. Furbeck; Willard Fyfe; Katherine Gack; B. J. Gale; Mrs. E. A. Gale; I. B. Gale; Otis Gale; W. T. Gale; E. Gallego; Jesse A. Gamble; L. D. Gamble; Casimiro Garcia; C. Garcia; Jesus Garcia; Jose B. Garcia; Juan Garcia; Marajilda Garcia; Rafael Garcia, Tomas Garcia; Victoriano Garcia; Thomas Gardner; F. M. Gault; Ramon Gaunn; Fernando Gervantes; Charles Gietz; Gila Valley Irrigation District; W. L. Gilbert; H. A. Gill; Albert Gillespie; Edward L. Gillespie; James Gillespie; Shell Gillespie; William H. Gillespie; Aubra Gilliland; Forrest Gilliland; J. M. Gilliland; R. C. Gilliland; J. R. Gilmore; Emil Girard; T. H. B. Glasgaple; Hollie R. Gochenour; J. R. Golding; Mrs. E. C. Gonzales; Trivio Gonzales; Mrs. Francis Goodman; George A. Gourley; H. Grady; Graham Canal Company; County of Graham, State of Arizona; George F. Graham; Mattie Graham; Epitacio Granillo; J. L. Green; Reece D. Green; Joseph Greene; Joseph Greenhalgh; J. W. Greenhalgh; R. H. Greenhalgh; Christino Grijalva; J. M. Grijalva; Merajilda Grijalva; C. J. Grover; A. C. Grunell; John Hagan; Virginia Hales; John Hamilton; Hugh C. Hannan; A. T. Hannons, Receiver; Annie B. Hancock; E. E. Hancock, Ira Hancock; Jesse A. Hancock; M. M. Hancock; May Catlin Hansen; H. B. Harms; A. Harper; John H. Harper; H. B. Harris; M. L. Harris; Waldo Harris; J. B. Harsha; Delbert Hatch; George L. Hatch; G. J. Hatch; G. Lynn Hatch; Vernon W. Havins; Elijah Hawkins; J. H. Hawkins; C. D. Hayzlo; L. B. Head; George W. Healy; J. L. Henderson; C. M. Hendricks; John Hendricks; Sam Henry; Grady L. Herring; W. E. Herron; C. C. Hester; O. L. Hext; Spence C. Heywood; C. N. Higgins; Heber M. Higgins; Floyd Hightower; C. P. Hill; J. W. Hill; Mrs. Clara Hinton; Nellie R. Hoak; Calvin Hocker; F. M. Holliday; Scott Holladay; S. N. Holsen; J. W. Holycak; William W. Holycak; Mrs. Arthur Hoopes; Bert Hoopes; H. E. Hoopes; John L. Hoopes; George A. Hoopes; O. F. Houlihan; E. D. Householder; E. D. Howard; J. M. Howard; Joseph Howard; S. D. Howard; Almera Hubbard; Thomas H. Hundley; A. C. Hunt; Sarah A. Hunt; Mrs. S. J. Hunter; Mrs. W. E. Irvin; Zah Ison; George F. Jacobsen; Martin Jacobsen; P. J. Jacobsen; Edith B. Jamieson; F. P. Jamieson; J. C. Jamieson; James C. Jayne; S. L. Jenkins; S. P. Jenkins; James Jensen; N. N. Jensen; Milton M. Jensen; Rachel Jenson; David Johns; Charles P. Johns; D. L. Johns; J. C. Johns; L. A. Johns; R. T. Johns; S. L. Johns; W. A. Johns; Mrs. William Johns; Delbert Johnson; D. C. Johnson; E. R. Johnson;

114

C. E. Jameson; Norman J. Johnson; P. Johnson; Thomas H. Johnson; Orlando Jolly; F. W. Jones; James E. Jones; John B. Jones; Mary Jane Jones; Parley P. Jones; Richard J. Jones; T. V. Jones; Willard E. Jones; Julia R. Julian; David Jurado; Culver Kartchner; Leo Kieffer; A. E. Keller; P. M. Kelly; Mrs. S. L. Kemp; Dell Kempton, Administratrix of the Estate of A. H. Bryce, deceased; A. J. Kempton; Ann B. Kempton; Calvin I. Kempton; Fred Kempton; Heber Kempton; Ira H. Kempton; Mrs. Margaret R. Kempton; R. H. Kempton; Donald Kennedy; J. D. Kennison; Fred H. Kenover; Ola R. Kenover; Charles Kerby; W. M. Kerby; W. O. Kidder; George Killian; Heber C. Kimball; Spencer Kimball; Thomas S. Kimball; F. E. Kirkpatrick; Richard Kirtland; H. B. Klingenberg; Edith Knappenberger; Frank Knappenberger; William G. Knight; Anna E. Kochmeier; Frederick Kochmeier; Henry Kochmeier, Sr., Henry D. Kochmeier; Maria Kochmeier; Gustav Kraiska; Charles Kruger; Cora Kruger; James J. Kruse; Ed Lacy; J. E. LaFleur; K. M. Lambson; A. O. Lamoreaux; A. O. Lamoreaux, Jr.; Guy W. Lamoreaux; R. D. Lamoreaux; W. W. Lane; Rafael G. Larena; Maude Larson; Beatrice Larson; Charles S. Larson; C. O. Larson; Earl Larson; Ephriam Larson; James M. Larson; Joe Larson; Lehi Larson, Sr.; Marcel Larson; Mildred B. Larson; Mrs. Olivea Larson; Orvil Larson; William Larson; Dirk Lay; Elizabeth L. Lay; Alex Layton; Layton Corporation of the Church of Jesus Christ of Latter Day Saints; A. T. Layton; Charles M. Layton; G. M. Layton, Jr.; H. W. Layton; James Layton; Leslie M. Layton; M. M. Layton; Oscar G. Layton; R. G. Layton, Jr.; Ray A. Layton; Amy T. Leavitt; Lois LeBaron; Art Lee; Claude M. Lee; J. D. Lee; J. Y. Lee; Marion Lee; Mrs. W. A. Lewis; Mrs. Nicia Lindsey; Al Lines; Henry Lines; Joseph H. Lines; Milton Lines; W. A. Lines; David A. Little; A. H. Livvix; W. W. Lloyd; Minnie Lobb; T. A. Lonergan, Administrator of the Estate of W. M. Lonergan; Anna H. Lunt; Edward Lunt; George A. Lunt; O. V. Lunt; Heaton Lunt; Owen Lunt; P. L. Lunt; Randall Lunt, Administrator of the Estate of Jasper Cale, deceased; R. M. Lunt; Charles Luster; R. L. McAllister; May H. McBennett; D. C. McBride; Ether McBride; James A. McBride; Laura McBride; P. H. McBride; P. H. McBride, Jr.; W. E. McBride; A. L. McCann; Alpha E. McCann; Minnie M. McCann; James K. McCarty; W. V. McCarty; Mrs. Laura McCallon; Mitchel McDonald; Carrie McDowell; N. W. McDowell; O. J. McElroy; Martha McElroy; A. F. McEuen; E. V. McEuen; M. P. McEwan; Virgil R. McGee; Ernest W. McFarland; Gertrude B. McGee; J. F. McGrath; Thomas McGuire; Glen C. McKenzie; R. J. McLaren; Gordon McMurray; Elizabeth P. McMurray; N. H. McNeil; M. J. Mabin; A. C. Mack; C. M. Mack; Henry H. Mack; J. A. Mack; J. H. Mack; William S. Mack; Robert Mackey; Abran Madrid; James Mallon; M. J. Mallon; Angus Maloy; C. B. Maloy; H. D. Maloy; Melanie Mandell; Clark Mangum; William Mansko; S. Marcus; Rita Marquez; Ivey Marshall; Ralph K. Marshall; S. S. Marshall; R. G. Marshall; Joe Martin; C. C. Martin; Clarence Martin; David Carr Martin; Elizabeth M. Martin; J. A. Martin; J. B. Martin; J. S. Martin; Mrs. W. F. Martin; Juan Martinez; C. V. Massey; Mrs. L. A. Massey; Ben B. Mathews; George A. Mathews; George Clyde Mathews; Simon Mathews; C. A. Matthews; Mrs. Calos Matthews; D. N. Matthews; Eliza Matthews; Jess L. Mattice; John W. Mattice; Lewis P. Mattice; Ben Mauer; Josiah J. Maxey; Kimball Maxham; Mrs. P. M. Medhurst; R. D. Melick; Enos B. Mellinger; Miguel Mena; Manuel Mendez; Demesio C. Meraz; Lillian C. Merchant; E. A. Merrill; Fenley F. Merrill; Gerald Merrill; H. W. Merrill; Martha A. Merrill; Orson A. Merrill; P. C. Merrill; P. C. Merrill, Administrator of the estate of Joe Pomyi, deceased; P. N. Merrill; S. A. Merrill; T. S. Merrill; J. H. Merrion, Executor of the Estate of Alice E. Day, deceased; Miles Messinger; Louis Micheloni; Mrs. M. Micheloni; John W. Michon; Mrs. J. S. Miles; Mary L. Miles; C. W. Miller; R. E. Miller; R. H. Miller; J. L. Mills; Fred M. Mitchell; James A. Mitchell; Lillian I. Mitchell; Moddle Canal Company; Henry C. Moeller; Sixto Molino; Francisco Montes; Jesus Montes; Montezuma Canal Company; Robert M. Montgomery; C. K. Montierth; George Montierth; Leslie Montierth; M. C. Montierth; Tandell Montierth; Edward Moody; Edwin Moody; J. M. Moody; Theodore H. Moody; Winford Moody; Fayette Moore; J. R. Moore; R. C. Moore; Ethel M. Moorehouse; H. W. Moorehouse; Holland H. Moorehouse; Vashti B. Moorehouse; Jose Morales; Mrs. Belle Morris; Cleora Morris; E. W. Morris; Frank Morris; George Albert Morris; John W. Morris; Robert Morris; William Morris; Hans Mortensen; Hiram K. Mortensen; J. Alfred Mortensen; N. Mortensen; O. Mortensen; Peter Mortensen; W. T. Mosley; G. N. Moten; D. T. Motes; Ernest Motes; P. L. Motes; L. D. Moyers; L. G. Moyers; W. F. Moyers; Anna M. Moyes; Joseph Moyes; Margarete L. Murphy; J. S. Murry; L. S. Mafziger; M. M. Mafziger; E. R. Mullen; J. R. Mullen; Robert L. Nash; Amanda Nations; Aron T. Nelson; L. A. Nelson; M. L. Nelson; Nevada Consolidated Copper Company; E. B. Newman, Administrator of the estate of H. H. Scorce, deceased; S. W. Newman; C. H. Niemeyer; H. L. Norton, Jr.; H. L. Norton, Sr.; J. E. Norton; Lloyd Norton; P. A. Norton; E. H. Norton; William B. Norton; Catherina A. Norviel; Leon N. Novell; John Nulton; H. J. Nunn; T. A. Nunn; J. H. Nuttall; J. P. Oberhelser; Braulio Ochoa; Lillian O'Connor; Olive J. O'Connor; O. C. Odell; Louis Olsen; Victoriano Olivas; W. Ollerton; Mrs. E. Olsen; Elsa Olsen; Oscar Olsen; James Opie; N. Ortiz; Peter O. Overfield; Elsie L. Overly; J. T. Owens, Jr.; O. E. Owens; Mrs. C. R. Pace; Mrs. Isabelle Pace; Nancy O. Pace; W. H. Pace; Ana Packer; E. H. Packer; H. C. Packer; Antonio S. Padilla; Joaquin Padilla; Mrs. Marcelina Padilla; Florente Palamounter; Howard G. Palamounter; E. Palmer; I. J. Palmer; Isaac O. Palmer; J. I. Palmer; Lee L. Palmer; Mrs. Nancy Palmer; Ray Palmer; Van D. Palmer; C. C. Passmore; Lee Patrick; Ray P. Patrick; George W. Patten; Hariet E. Patten; Estate of Earl P. Patterson, Thomas D. Perry, Administrator; M. D. Patton; E. C. Payne; C. Q. Payne; Helen A. Payne; H. M. Payne, J. E. Payne, Trustee, Church of Jesus Christ of Latter Day Saints; Junius M. Payne; Leslie B. Payne; Willie K. Pearson; Dan T. Peart, Administrator of the

115

Estate of Thomas J. Barrett, deceased; George O. Peck; William A. Peck; Calista B. Peel; Emma Pennington; Walter J. Pennington; Mabel Perkins; Maranda Perkins; Juvenal Perolas, Administrator of the estate of Donas De Leon, deceased; Beatrice Perry; Amandus C. Peters; Jacob Peters; Alma Peterson; P. O. Peterson; Wilfred Peterson; Stone Phelps; Addie Phillips; E. C. Phillips; Jesse C. Phillips; Rudger Phillips; B. U. Philpott; Margaret E. Pierce; Pima Townsite; Pima Corporation of the Church of Jesus Christ of Latter Day Saints; Pinal Investment Company; Frank Pinkley; Eli E. Piper; C. Pirtle; W. A. Pitt; Mrs. M. E. Pittman; Ben T. Platt; W. E. Platt; E. H. Plumb; Henry E. Plumb; J. H. Plumb; S. V. Pollock; A. T. Polloch; N. H. Pulloch; James H. Porter; S. V. Porter; W. A. Posy; W. A. Posy, Administrator of the Estate of Orson Elliott, deceased; Grace P. Pottsbaum; Robert H. Pottsbaum; D. T. Preston; H. F. Preston; T. F. Preston; W. J. Preston; Estate of W. T. Price; Mrs. W. T. Price; Mrs. Mattie Price; Alice M. Prouty; Lloyd R. Prouty; W. Scott Prouty; James B. Pruett; Harriett Pulsipher; J. E. Pulsipher; O. T. Purdy; Charles M. Pursley; C. W. Quinn; Jesse B. Quinn; Anastacio Quiroz; Margarete Ragsdale; Henry E. Ragsdale; Mrs. Ethel Rainbolt; Oscar Rainville; Edwin Ralph; D. Raper; B. O. Rapier; Henderson H. Raybourn; A. V. Read; Miles Reay; Martin J. Reed; Robert E. Reed; Sarah E. Reed; Mrs. W. R. Reed; T. J. Rex; O. Reyes; Carlysle Reynolds; George Reynolds; Mrs. Nancy Reynolds; S. E. Reynolds; J. F. Rhinehart; W. C. Richards; George F. Richards; Fern M. Richardson; Gilbert Richardson; H. G. Richardson; Ralph Richardson; Rebecca Richardson; Sarah L. Richardson; Orson J. Richens; E. W. Richens; R. Richens; David L. Ridgeway; Lito Rios; W. H. Roach; J. R. Robbs; T. P. Robinson; Charles Rogers; David Rogers; H. P. Rogers; Joseph Rogers; Mrs. Louisa Rogers; A. Rohner; Ernest V. Romney; Eugene Romney; Julius Romney; S. H. Rornbaugh; C. H. Rose; Nicle J. Rosebery; F. E. Ross; Ralph M. Rounds; Pedro Ruiz; Espedion Sadilla; Town of Safford; Andria V. Salazar; Christiana Salazar; C. B. Salo; Ethlice Saline; John Saline; Roy Saline; W. D. Saline; Jose Samora; San Carlos Irrigation and Drainage District; Abel Sanchez; Adiel Sanchez; Daniel Sanchez; Eliseo Sanchez; F. Sanchez; Isaac Sanchez; Manuel Sanchez; D. W. Sanders; George Sanders; H. T. Sanders; San Jose Canal Company; John Sarman; Clarence Scarlett; J. W. H. Scarlett; L. B. Scarlett; W. F. Scarlett; E. M. Schade; B. W. Scholtz; School District No. 1, County of Graham, State of Arizona; School District No. 2, County of Hidalgo, State of New Mexico; School District No. 7, County of Graham, State of Arizona; School District No. 7, County of Hidalgo, State of New Mexico; School District No. 8, County of Graham, State of Arizona; School District No. 11, County of Graham, State of Arizona; School District No. 12, County of Graham, State of Arizona; School District No. 27, County of Greenlee, State of Arizona; School District No. 31, County of Graham, State of Arizona; Frank Schultz; William J. Schultze; J. E. Schurtz; Charles M. Schwab; Emma B. Schwarz; Brooks Scott; Andy Scott; Clara C. Seagoe; S. E. D. Sears; George P. Sellers; Andreas Serna; Santos Serna; Sexton Canal Company; R. Sexton; Elizabeth Shannon; Charles M. Shanton; Mary L. Shannon; Walter Shayeb; Charles M. Schoafe; Helen S. Shoafe; James S. Shoafe; Mary S. Shoafe; Mrs. John Shields; A. J. Shiflet; Chloran B. Shiflet; J. B. Shiflet; R. R. Shipp; Dolores B. Shirk; Laura Short; Shriver Ditch Company; W. P. Shriver; George R. Shurtz; John Sigfrid; Carrie S. Sigler; George W. Sigler; Mrs. E. M. Simmons; J. O. Simmons; Jesse B. Sisco; Sinclair Realty Company; Marcni Skinner; Francis M. Skinner; Mrs. Martha Skinner; Helen Slaughter; A. A. Smith; Mrs. D. E. Smith; E. D. Smith; George W. Smith; Henry L. Smith; H. L. Smith; J. G. Smith; J. M. Smith; Joanna Smith; L. W. Smith; M. M. Smith; Nancy A. Smith; R. A. Smith, Sr.; Mrs. W. R. Smith; Mrs. J. B. Smithson; Smithville Canal Company; Charles F. Solomon; Townsite of Solomonville; V. Soto; Southern Arizona Bank & Trust Company; C. H. Southworth; J. W. Sowell; S. A. Sowell; W. H. Spafford; Herbert G. Sparks; W. D. Spear; Antonio Specia; Emma Spoon, Administratrix of the Estate of J. H. Spoon, deceased; C. C. Springer; Mrs. C. P. Stanley; Albert Stephens; Mary E. Stevens; N. W. Stevenson; T. J. Steward; A. L. Stewart; Dugald Stewart; M. E. Stewart; Pratt Stewart; Mrs. R. S. Stewart; George W. Stinson; T. V. Stokes; Walter W. Stovall; B. P. Stover; John Stove; Brigham Stowell; Lee N. Straton, Administrator of the Estate of Mrs. N. A. Ball, deceased; Mathews Stuart; E. P. Stuarvar; Nicholas Sauren; Tim Sullivan; H. B. Summers; W. R. Summers; Sunnyslope Canal Company; Sunset Canal Company; Surety Abstract & Realty Co., J. C. Swan; Estate of John W. Sweeney, Sam Sweeney, Administrator; Florence R. Swofford; D. V. A. Talley; James M. Talley; J. T. Talley; T. Hugh Talley; Van Talley; K. V. D. Talley; Chas. F. Tantlinger; A. V. Tate; M. M. Tate; F. R. Taylor; John B. Taylor; L. M. Taylor; Sarah Taylor; William C. Taylor; William M. Taylor; P. H. Teeple; Charles Telles; S. E. Tellyer; S. B. Tenny, Jr., Frank A. Thackery; Alva Thatcher; L. M. Thatcher; Town of Thatcher; Augusta Thor; Fred Thor; H. D. Thornton; E. Thygerson; John Tidwell and E. L. Tidwell, Jr., Administrators of the Estate of E. L. Tidwell, deceased; Ida Tidwell; Tidwell Canal Company; Mae Tiffiny; Sam R. Tilley; George A. Todd; John T. Traylor; Mrs. Billie Treat; James R. Treat; Dan A. Trehell; Louise M. Trehell; S. Louise Trehell; Mary E. Truman; B. B. Tucker; E. S. Turville; H. D. Tuttle; Frank M. Tyler; Oscar Tyler; William O. Tyler; N. P. Tyrrn; Union Canal Company; Mrs. A. C. Urban; F. A. Urban; H. C. Usher; George Utter;

116

BEST AVAILABLE COPY

The Valley Bank and Trust Co.; Valley Canal Company; Calbert L. Vance; Viola G. Vance; George Van Cannig; Ed C. Van Horn; Harry Van Order, Administrator of the Estate of Harry Van Order, deceased; Jose Varela; Antonio Vasquez; Gregorio Vasquez; Emula Viala; Augustine Villar; Joe Villar; Jose Villareal; Virden Irrigation District; B. R. Waddell; Peter Wahlin; George P. Walker; Jerome Walker; J. P. Walker; Charles Wamsley; Mrs. J. C. Wamsley; Mattie Wamsley; T. H. Wamsley; William Wamsley; Harry Ward; Roy S. Ward; Alvin Warner; Mrs. H. E. Warner; C. E. Waterbury; Josie Waterbury; Henry A. Waters; Charles Watson; Lorenzo Watson; J. L. T. Watters; Fred Waughtal; Katie E. Weaver; Fred Webb; J. D. Webb; F. A. Webster; O. F. Webster; O. F. Webster, Administrator of the Estate of Thomas G. Webster, deceased; William Webster; A. E. Weesh; Adam Welker; Arthur Welker; C. D. Welker; J. A. Welker; R. A. Welker; Willard Welker; A. T. West; John West; Adolphus Weyrick; B. T. Whipple; Mrs. M. C. White; Natalie M. White; West White; Dorcas E. Whitley; S. P. Whitmer, Jr.; S. P. Whitmer, Sr.; Mrs. Mildred Whitmer; Joe Whittridge; Fred M. Wiener; H. B. Wiggins; W. H. Wild; B. W. Wilbey; A. A. Wilkins; Mrs. Charlotte Wilkins; D. E. Wilkins; E. J. Wilkins; J. D. Wilkins; Dan Williams; Lila Williams; Nephi Williams; Roy D. Williams; S. O. Williams; Isaac Williamson; Mrs. T. M. Williamson; T. L. Willis; Josephine R. Wills; B. A. Wilson; George A. Wilson; J. M. Wilson; Mrs. Virgie R. Wilson; Mrs. W. A. Wilson; Sophie Wind; Page B. Windham; Alonzo Winsor; F. M. Woodward; Jessie P. Moody; B. A. Woolsey; H. C. Wright; George H. Wyatt; Soren Yensen; Carrie B. Yott; York Canal Company; York Cattle Company; Dan Young; Mrs. G. R. Young; Elsie De Wolf Zollweger; and John Hicks; J. T. Massey; Estate of Lois B. Lee, Dan T. Peart, Administrator; Ray Consolidated Copper Company; Valley Bank of Phoenix; and Kennecott Copper Corporation.

Defendants.

117

DECREE

This cause came on to be heard at this term, and thereupon it was shown to the court:

That the plaintiff and the parties defendant whose claims and rights have been presented by answer or stipulation and remain for determination herein, have concluded and settled all issues in this cause as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed — all as evidenced, for plaintiff, by the assenting signatures, endorsed at the end hereof, of its solicitors of record and the Attorney General and Secretary of the Interior of the United States, and for said defendants, by the assenting signatures, likewise endorsed at the end hereof personally, or of their several solicitors of record — that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause, defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth; and the Court upon consideration thereof and of the record herein as to the disposal of the parties defendant who have been separated from the cause, and being duly informed in said premises, doth find, order, adjudge, and declare its decree herein to be as follows, namely:

I

That by the orders of this Court dated January 22, 1929, and March 11, 1930, this suit and the amended complaint herein, upon the motion of plaintiff, were dismissed as to defendants:

John S. Abbott; Charles A. Adams; A. Allen; Francisco Alvidrus; Paul Becker; George P. Bennett; Mary H. Benscoe; Bentz Brothers; J. W. Bentz; George A. Bigler; C. C. Billingsley; Est. of Paul Blankmore; B. A. Boyles; Asa Brown; Newton Bradley; Juan Cachos; Ella Carpenter; J. C. Carpenter; Rachel Carr; John Castro; Chano Colayo; Tim Chapman; Ben M. Crawford; W. J. Davis; C. M. Dinsmore; John Eastman; Dud Eldridge; J. F. English; Helen T. French; Hattie M. Hall; Hawkins & Sisson Milling & Irrigating Company; A. W. Heath; Mrs. Clara Hicks; James Henshall; Jacob Hildebaugh; J. I. Hinkle; J. P. Hinkle; A. M. Hooper; Roger Hoopes; J. C. Hopkins; H. T. Harrell; Arthur Hooper; S. L. Johns; Bennet J. Kellner; Ernest F. Kellner; H. D. Kepner; J. H. Kerby; J. H. Laney; John Laffey; Louise LeBaron; James LeHuzi; W. A. Leonard; Mrs. Frank Lewis; J. W. Lightfoot; George Lobb; Gordon McLean; B. Mately; Rafael Means; Manrico Mijia; Sidney B. Moser; H. C. Montgomery; Charles Morrell; Reputhio Moriz; George Olmstead; Lillian M. Peart; James A. Perkins; Mario C. Peters; S. K. Phillips; Frederick W. Putman; John Ralston; Gabriel Robles; H. W. Russel; Victoriana Ruiz; J. Ryan; N. Salsman; Manuel Serrano; S. Schultz; Charles H. Vann; Walter Shayeb; Estate of Charles R. Sligh; Heliberto Subia; Edward H. Sinclair; George Thompson; Jose Tonic; J. C. Turney; Manuel Urtiaga; Elijah Urtiaga; Judd Webster; George W. Wells; and O. H. Brown;

W. L. Gaither; W. R. Elliott; William Jackson; J. F. Hopper; D. T. McGuire; and H. B. Keating;

it having been found and determined by the Court in that relation that they and each of them were not proper or necessary parties defendant in this cause; which said action of the Court in these premises is hereby confirmed.

II

That by way of amended complaint, as filed herein on the 6th day of December, A. D., 1927, and orders of this Court bringing in new parties defendant under said amended complaint,

[redacted] complaint herein was directed against each and all of the defendants named below, to-wit:

D. Deriaglio; Beatrice Perry; and H. B. Higgins:

Also, James R. Pruett; Antonio Spezia and H. H. Sumners:

Also, American Smelting and Refining Company; A. A. Anderson; John H. Anderson; Mary A. Antonelli; Estate of Walter Bailey, Homer H. Martin, Administrator; J. W. Baker; Henry Bannenberger; Ruth R. Barham; Estate of Thomas Barrett, Dan T. Pearl, Administrator; Penny Kenesaw Bartlett; Madeleine Bassler; Albert C. Beehan; Grace R. Beehan; Charles F. Bennett; Jarvus D. Bennett; Francis D. Blair; Clifton Bogard; C. D. Bradley; Ida M. Bradley; John H. Bradshaw; Esther A. Broskway; Ira S. Brayton; Marshall F. Broomway; Charlotte Hall Brown; Elizabeth Brown; J. P. Brown; Sarah B. Brown; Thomas Hall Brown; Estate of W. F. Brown, P. D. Overfield, Administrator; John J. Boggs; John W. Burris; Lee Robinson Burris; L. B. Cadwell; Casa Grande Valley Bank; Mike Coleys; Estate of W. B. Charlton, John E. Charlton, Administrator; Albert J. Christensen; Edith M. Clemans; Hazel M. Clemans; Winnefred V. Clemans; W. J. Clemans, Jr.; W. F. Clements; Mrs. Charles E. Cleveland; Inez M. Conrad; Thomas A. Crow; Jessie Davidson; Maurice Dodd; Tracy Eastman; Christobell C. Ellis; Joe Eroy; Jesus Espinosa; Jose T. Espinosa; Salvador S. Feliz; C. A. Fitzgerald; James D. Freeman; Fidelity Savings & Loan Association; First National Bank of Florence; May E. Furbeck; Kathrine Gash; Estate of George F. Gallagher, Robert Denton, Administrator; L. D. Gamble; N. L. Gilbert; George P. Graham; Mollie M. Gochenour; Joseph Greene; Virginia Hales; John Hamilton; A. T. Hamman, Receiver; May Catlin Hanson; J. B. Hartha; Vernon W. [illegible]ins; John Hendricks; W. E. Herren; Edith B. Jamieson; James C. Jayne; E. R. Johnson; Richard J. Jones; Julia R. Julian; Fred R. Kenover; Ola A. Kenover; H. B. Klingenberg; Anna E. Koehanaier; Frederick Koehenaier; Henry Koehanaier, Sr.; Henry D. Koehenaier; Maria Koehanaier; Gustav K. Kratzka; James J. Kruse; J. E. LaFleur; W. W. Lane; Dirk Lay; Elizabeth L. Lay; Estate of Lela W. Lee, Dan T. Pearl, Administrator; David A. Little; Minnie Lobb; Estate of W. H. Lonergan, T. A. Lonergan, Administrator; May N. McBennett; A. L. McCann; Alpha E. McCann; Minnie M. McCann; James K. McCarty; Carrie McDonell; M. W. McDonell; Gertrude B. McGee; Glen C. McKenzie; Elizabeth P. McMurray; Melanie Mendall; Rita Marquez; Ivey Marshall; Ralph K. Marshall; Joe Martin; David Owen Martin; Ben B. Mathews; Josiah J. Maxey; R. D. Mellish; Lillian C. Merchant; John D. Michea; J. L. Mills; Mary L. Miles; R. M. Miller; Lillian I. Mitchell; Henry C. Moeller; Fayette Moore; Ethel M. Moorehouse; H. M. Moorehouse; Vashti B. Moorehouse; Margarete L. Murphy; J. S. Murry; C. H. Niemeyer; Lillian O'Connor; Olive J. O'Conner; Lewis Olcott; Antonio S. Padilla; Florence Palamountain; Howard G. Palamountain; Lee Patrick; Roy F. Patrick; George W. Pattee; Harriet E. Pattee; Estate of Earl P. Patterson, Thomas D. Berry, Administrator; Willie M. Pearson; Emma Pennington; Walter J. Pennington; Amandus C. Peters; Addie Phillips; Margaret E. Pierce; Pinal Investment Company; Frank Pinkley; Eli E. Piper; W. M. Pollock; Grace P. Pottsham; Robert H. Pottsham; Estate of H. T. Price; Mrs. H. T. Price; Alice M. Prouty; Lloyd W. Prouty; W. Scott Prouty; Edwin Ralph; Henderson H. Rayborn; A. V. Read; Martin J. Reed; Fern M. Richardson; H. G. Richardson; S. H. Roraback; Ralph M. Rounds; Andria V. Salazar; Christiana Salazar; John Samaan; B. W. Scholtz; Estate of Elizabeth Schulte, Fred T. Armstead, Administrator; William J. Schultze; Charles M. Schuck; Emma B. Schwarm; Clara C. Scoggs; George P. Sellers; Mary S. Schoefe; Elizabeth Shannon; Mary L. Shannon; Chloren B. Shiflet; John Sigfrid; Carrie S. Sigler; George W. Sigler; J. G. Simmons; Southern Arizona Bank & Trust Company; Herbert G. Sparks; C. C. Springer; Mary E. Stevens; T. V. Stokes; Walter W. Stovall; Tim Sullivan; Surety Abstract & Realty Company; J. C. Svan; Estate of John W. Sweeney, Sam Drezley, Administrator; Chas. F. Tantlinger; S. C. Tellyer; Frank A. Thackery; Augusta Thor; Fred Thor; Mae Tiffiny; Mrs. Billie

119

Trust; S. Louise Trahell; Mary E. Truman; H. S. Turville; Mrs. A. C. Urban; F. A. Urban; Valley Bank of Phoenix; Calbert L. Vance; Viola C. Vance; Ed G. Van Haren; Gregorio Vasquez; Augustine Villar; Joe Villar; George P. Walker; Harry Ward; Roy S. Ward; C. B. Waterbury; Josie Waterbury; Katie E. Weaver; Adolphus Weyrick; Natalia M. White; Dorcas E. Whitlow; Josephine B. Wills; Sophia Wind; Jessie P. Woody; Soren Youngs; and Elsie DeWolf Zollenger:

That original process thereunder by way of Subpoena Ad Respondendum, or by Court Order under section 57 of the Judicial Code, was duly issued and served, with a copy of the amended complaint, upon each of the aforenamed defendants, and each of said defendants failed and neglected to make or file an answer or otherwise defend or make a plea to said amended complaint as required by Rule 18 of the Rules of Practice for Courts of Equity of the United States; that orders taking the amended complaint as confessed by them and each of them were duly made herein and entered in the Order Book on the 25th day of November, 1929, the 11th day of March, 1930 and on the 19th day of December, 1934, in the office of the Clerk of this Court; each such order being so made and entered after the failure of each of the particular defendants named therein to make answer, defense or other plea as aforesaid; that no proceeding has been taken or initiated by them or any of them since the entry of said orders, and each thereof; and said defendants and each and every of them are now and remain in default of any answer, defense or other plea herein, and more than 30 days have elapsed since the entry of said orders and each thereof.

That under the orders Pro Confesso aforesaid, the amended complaint is taken as confessed, and it is ordered, adjudged and decreed herein, that the defendants above named in this article and each thereof, as against any of the parties plaintiff or defendant in this cause, their assigns or successors in interest, or their rights as herein decreed; that said defendants and each of them have no right to the use of water from the Gila River as against the parties to this action other than those set up in this decree, and they and each of them and, their heirs, executors, administrators and assigns or successors in interest are debarred and estopped from acquiring or claiming any different or other right, title or interest in or to the water or the use of any water from the Gila River as against the rights of the plaintiff and those of the defendants determined and set up in this decree.

III

That, upon the motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint herein were dismissed without prejudice as to the following defendants, to-wit:

S. B. Blake; Cluff & Mitchell; Calvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. Hoffman; Ray A. Martin; Ed Moody; J. C. Morton; George A. Olney; Ira Packard; N. E. Platt; H. E. Posy; S. A. Powell; Pursley & Nash; Mrs. Mary Reynolds; Bert B. Rose; Smithville Extension Canal Company; Cicero Tolles; E. L. Tidwell; Louis Voelskel; W. J. Walton; T. W. Wamsley; Estate of Webster, F. A. Kehler, Administrator; Estate of J. N. Williams; B. D. Wilson; Young & Ridgway;

Also, Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; E. T. Bishop; Harry H. Boyer; Borcher Ditch Company; Estate of W. C. Cheatham; Edsard C. Cole; Consolidated Canal Company; J. H. T. Cooper; Cooper-Wilson Canal Company; Ethel H. Cunningham; E. C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Fillman; J. J. Fillman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve K. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francelle Haywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lottie

120

R. Hunt; M. J. Jones; M. L. Jones; D. L. Johnson; P. H. Johnson; R. S. Johnson; A. L. Jones; J. M. Jones, Sr., Estate; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Arvon Mortensen; T. J. Mullens; C. O. Payne; C. V. Perry; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smalley; A. F. Smith; The Estate of Spoon, Ira L. Spoon, Adm.; A. C. Stevenson; W. H. Stevenson; Sunset Irrigating Canal Company; D. H. Thompson; W. Plume Tibbets; H. P. Trainer; Virden Ward; Ward & Courtney Gas Company; T. M. Williamson; State of New Mexico;

Also, Phelps Dodge Corporation; Arizona Copper Company;

Also, Morenci Water Company;

Also, Aztec Mutual Canal Company; James LeRoy McCarthy; Richard E. Taylor; Frank C. Elsell.

Said action was had and taken in pursuance of those certain five stipulations between the plaintiff and the defendants above named through their solicitors of record, on file herein; wherein and whereby it appeared that said defendants and each of them had been named in this action and amended complaint, as parties defendant herein, through and by inadvertence, mistake and error, and that their claims and rights, if any, were and are outside the scope of said suit as same was and is outlined and defined in the amended complaint herein, and that they and each of them should be dismissed and eliminated from said cause, although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined and defined in plaintiff's said amended complaint. It was agreed in said stipulations that the dismissal of said defendants should be accomplished upon motion of the plaintiff and Order of this Court as aforesaid, and that said Order should provide as in fact it does, as made and entered, of record herein that: said action and dismissal should be without prejudice to said defendants and each of them and/or to any of the other parties in this cause, or to any claim or rights to the use of water which said defendants, or any of them, or said other parties or any of them, now or hereafter may have, against the other or others, and that said defendants, and each of them, should be left as though they never had been named or made parties defendant herein; which said action heretofore taken by the Court in the premises, is hereby confirmed, and the provisions herein recited in reference thereto are made a part of this decree to protect their rights in that respect.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were dismissed as to the following named defendants, to-wit:

A. F. Angle; Arizona Hercules Copper Company; Josephine Burke; Simon Cisneros; Louis Gilson; Gold Bullion Mining Company; Charles J. Green; John M. Hatfield; C. H. Head; London Gila Mining Company; Theodore Lujan; Katherine S. Mellon; Luis Santos; and Manuel Tibbets;

Also, Prince Placer Mining Company; Anna M. Cale; A. A. Larosa; Bretton Lunt; Jose Sanchez; William Whelin; Harry C. White; and the White Mountain Lumber Company.

Said action having been taken for the reason that; from said motion on file herein it appeared that said defendants and each of them has no interest in the issues of this action and that none of them were or are necessary parties defendant; the action heretofore taken in these premises is hereby confirmed.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1936, this suit and the amended complaint were dismissed, without prejudice, as to the following named

defendants, to-wit:

Castile Ditch; Thomas Crabtree; Ed Hirugs; Dale M. Carden; Jensen Brothers; J. B. Johns; P. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M. J. McClarea; Hugh McKeon; William Milligan; Alfred Mortensen; Nisbole & Company; Texas Ponce; Horace R. Saxton; Ernest D. Shade; C. M. Short; Frank Shriver; A. R. Snyder; S. Stewart; T. L. Stockton; J. A. Suydam; Luther T. Sweeting; Miss E. A. Strafford; O. F. Strafford; Bonnie Ulrage; J. F. Wardner; and W. F. Willis;

said notice having been taken, because it appeared from said motion on file herein and the records; that said defendants and each of them were brought into the action by inadvertance and mistake and each was and is not a necessary party to this action, for the reason that they have no interests or that they are outside the scope of the suit as defined in the amended complaint herein. The action taken heretofore in these premises is hereby confirmed.

That at the same time and in the same order this suit and amended complaint were dismissed as to the following defendants, to-wit:

W. B. Barham; J. M. Biddle; Mary W. Bradshaw; Jackson Brannaman; Martha M. Brockway; Fred D. Carpenter; E. D. Chandler; Deana Harbison; Jim Harper; Jacob Helfenstein; A. S. Henry, Mrs. Alice Huntsman; John A. Johnson; A. E. Keeler; T. A. Lonergan; Clara B. McFarland; Cordon McMurray; William C. McNatt; R. B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy, W. F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George P. Shearer; Chas. D. Stahlberg; Gladine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Hixna; Virginia Griffis; Horace J. Johnson; Mary Johnson; Lula G. Lockard; and John C. Swan;

said action having been taken and had, for the reasons shown in said motion, to wit: that each of said defendants had been brought in as parties defendant through inadvertence and mistake or that they had transferred their interests to others who are parties defendant herein, and they are necessary parties defendant herein. The action heretofore taken in these premises is hereby confirmed.

That upon motion of the plaintiff, by Order of this Court, dated March 30, 1935, this suit and the amended complaint herein were dismissed, as to the following defendants, to-wit:

Henry W. Blough; John F. Brown; Fred E. Cask; John MacGregor Goodale; Frank E. Hamilton; Frederick M. Kratzka; J. T. Lewis; James P. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F. Sailey; Ola M. Saith; A. W. Sydnor; M. E. Templeton; Bert Vidaas; Fannie Wallrich; W. S. Williams; S. H. Wynn;

said action having been taken and had, for the reasons shown in said motion on file herein--as well as from the records herein, that; said and every of the last named parties are not necessary parties defendant herein; that their lands are embraced within and constitute a part of the San Carlos Irrigation and Drainage District; that each of them has entered into a contract with the United States, in relation to his land and water rights therefor and that because of said contractual relationship his lands have been and are designated as a part of the United States San Carlos Indian Irrigation Project; that their and each of their interests have been and are represented in this cause by said District and the plaintiff and that their and each of their water rights have been and are set up and provided for in this decree. The action taken heretofore by the Court in these premises is hereby confirmed.

That upon motion of the plaintiff, by Order of this Court on the 30th day of March, 1933, this suit and the amended complaint were dismissed as to the defendants: Estate of Doris Tharp, Edward Tharp, Administrator; Estate of James Tharp, Edward Tharp, Administrator; said action was taken and had pursuant to said motion on file herein and for the reasons therein given that; the lands and water rights thereunto belonging were by said parties covered into the Florence-Casa Grande Project by contract with the United States, the plaintiff herein; that their and each of their interests have been presented to the Court by the Florence-Casa Grande Water Users Association and their and each of their interests have been and are represented herein by the United States; that they are not necessary parties defendant in this action; that their and each of their interests are and have been set up and provided for in this decree and given their proper place in the Priority Schedule, a part of this decree, which said action is hereby confirmed.

That, upon motion duly made, by Order of this Court dated April 3rd, 1933, the Kennecott Copper Corporation, a corporation, was made a party defendant herein, by substitution, as the successor in interest of the Nevada Consolidated Copper Company and the Ray Consolidated Copper Company. The action heretofore taken in these premises is hereby confirmed.

IV

That the following named defendants own land as follows: Estate of Dora M. Clark, the NW¼, Section 22, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; Margaret P. Brown, the SW¼, Section 18, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; and H. H. McNeil, the W½ SE¼, Section 9, Township 5 South, Range 9 East, Gila and Salt River Base and Meridian; and Gila J. Baughn, 80 acres of land in the W½ SW¼ of Section 8, Township 6 South, Range 8 East, Gila and Salt River Base and Meridian; and that they and each of them in the past and prior to this decree, have made diligent and extensive efforts and have expended sums of money in an effort to secure water from the Gila River for the irrigation of their and each of their lands, but notwithstanding said efforts and expenditures, they and each of them were and have been unable to make use of said water upon their said lands and have not acquired any right to the use of said water from the Gila River upon their said lands, and that they and neither of them has a right to use water from the said river for the irrigation of their said lands as against the parties to this cause.

V

That each of the parties named in the Schedule of Rights and Priorities set out below and made part hereof (hereinafter for convenience often referred to as the Schedule or Priority Schedule), in proper person or in the representative capacity indicated, has acquired and owns the right or rights accredited to him in said Schedule; that the Gila River is the stream from which the water called for under each of said rights is and may be diverted; that the point of such diversion, the name or description of the dam, canal, or other appliance through which said diversion is accomplished and said waters are carried to the lands through the irrigation of which said right has been acquired, together with—as to individual defendants, and plaintiff where the appropriation rights of others have been conveyed to it as hereinafter further described—the description of said lands and the number of irrigable acres thereof in each quarter or quarter-quarter section, or lot or lots as the case may be, to which said right applies, are as stated in said schedule opposite the name of each of said parties in appropriately designated columns thereof; that the priority date of each of said rights is as stated for each owner in the column so designated, and such owner is entitled thereunder and as of the date of said priority to divert from the natural flow of the stream, at the point of diversion so designated and to carry and convey to, and apply to beneficial use upon, said lands for the irrigation thereof, during each irrigation season, a total amount of water not exceeding 6 acre feet per each acre of said lands, which said amount shall not be diverted from the stream at any time during said season at a greater rate than one-eightieth (1/80) of a cubic foot per second for each acre of said lands, except as hereinafter provided; that the right of direct diversion from the natural flow of the stream for each of said parties, therefore, may be readily calculated, for the area then being irrigated, as follows:

No. of acres times 6 =Total allowable diversion in acre-feet during each irrigation season;

No. of acres times 1/80=Rate of diversion in cubic feet per second which shall not be exceeded in making said draft;

provided, however, that the water commissioner hereinafter provided for, in order to take proper advantage of sudden freshets or other periods of more plentiful natural flow in the stream, may authorize and provide for, and as to the lands of defendants above the San Carlos Reservoir shall permit, when no injury will result to others not being so accommodated, diversions therefrom under said rights at a greater rate than 1/80 of a cubic foot per second, but subject to the explicit condition that the total diversion for the lands involved shall not exceed during the irrigation season the said total of 6 acre feet per acre; that the right of each of said parties, based upon the total area involved in each instance, is stated in acre feet per irrigation season, and in cubic feet per second (maximum rate of diversion as aforesaid), opposite the names of said party, respectively in the last two columns of said schedule; that this right for each of said parties entitles him to a first and prior call to the extent thereof upon the available natural flow of the stream as against others whose rights as listed in said Schedule bear later dates of priority than his own, while others, when their rights have earlier dates of priority than his, have a first and prior call to the extent thereof upon said stream flow as against his; that each of said rights is gauged by and limited to the amount of water which has been and can be beneficially diverted and applied to the irrigation of said lands; that this quantity is determined and adjudged herein to be the amount in acre-feet per acre for the irrigation season stated above, which shall include and be charged with all conveyance loss from the point of diversion from the stream to the lands; that said lands require that there be applied thereto, and therefore diverted from the stream, somewhat larger amounts of water in the hotter summer months of the irrigation season than at any other times therein, of which account is taken by providing herein for a considerably larger diversion right than would be required at constant even flow to produce 6 acre-feet per acre during each irrigation season; that where the figures and data given for a single water right priority are set opposite the names of more than one defendant in said Schedule, each of the same is deemed and held to have an undivided interest in the whole there described under such mutual contractual relations as may obtain between them, which are not defined or determined in this decree; that certain of the rights accredited to plaintiff in said Schedule may be classified as rights by purchase in that they were acquired by the United States by way of conveyances from the owners of the private lands through the irrigation of which they were acquired, said conveyances being made by way of the "Agreement of Landowners to induce the Secretary of the Interior to undertake the Florence-Casa Grande Irrigation Project, and for the building and operation thereof in case the same is declared feasible" and the "Landowners' Agreement with the Secretary of the Interior, San Carlos Project, Act of June 7, 1924," entered into by the United States and such owners, which were executed and put into effect under and in connection with the Florence-Casa Grande and San Carlos Projects; that these rights, having priorities in great number, ranging from the year 1868 to 1914 inclusive, are set down in their

order in said Schedule and totaled for each year under the name of the United States, with the description in each instance of the lands through the irrigation of which they were acquired by appropriation and beneficial use; also, in an appropriate column in each instance the names of the landowners making the conveyances, or their successors in interest, made formal parties defendant herein, are set down; all to the end that said rights may be identified and preserved; that plaintiff, in accord with said agreements and conveyances, is hereby authorized and empowered to divert from the Gila River the waters called for under said rights for use by irrigation upon the lands of the Florence-Casa Grande and San Carlos Projects as hereinafter further described; that the other rights of plaintiff, which may be generally described as those owned by the United States for and on account of the Indians of the Gila River and San Carlos Indian Reservations and as reservations and appropriations made by the United States for and on account of the Florence-Casa Grande and San Carlos Projects, are set down and outlined in their proper order in said Schedule as a matter of convenience, but each of said rights furthermore is specifically defined and decreed in later Articles hereof; including the right of the United States, as of the year 1934, to store the waters of the Gila River in the San Carlos Reservoir, which is specifically defined in Article VI and is of different character than the rights directly to divert from the natural flow of the stream, with which this Article of the Decree and the Priority Schedule made part hereof primarily has to do; that certain of the rights of plaintiff, as same are set down and referred to in said Schedule, do not accumulate, as is specifically stated and described in the last paragraph of Article VI of this decree; that also certain of the rights of the Nevada Consolidated Copper Company, as same are set down in said Schedule, do not accumulate, as is specifically stated in the first paragraph of Article IX hereof; that as to all other rights to divert the waters of the Gila River which are set down and defined in said Schedule, including the so-called rights by purchase of the United States (which for convenience here comes within the designation "concern"), when rights of different priorities are ascribed to the same person or concern, said rights as thus accredited to that person or concern do accumulate, so that the total amount of water in acre feet per season which can be taken from the stream, under the priority of any certain date and the priorities of previous dates (ascribed to that person or concern in said Schedule), with the maximum rate of diversion in cubic feet per second governing same, may and shall be ascertained by adding together the number of acre feet per season set down under each of said priorities; that maximum rate at which same can be diverted being also the sum of the maximum rates, in cubic feet per second, given under each of said dates of priority; that rights to divert the waters of the Gila River are decreed to the various canal companies and are set down under their names in the Priority Schedule as of various dates of priority; that the description in each instance of the lands through the irrigation of which said rights were acquired by appropriation and beneficial use and the names of the landowners or their successors in interest, made formal parties defendant herein (and set down under the heading "PARTIES OWNING SAID LANDS WHEN JURISDICTION ACQUIRED HEREIN"), whose beneficial application of water to said lands supported said appropriations are also listed under the names of each of said canal companies, the amounts of water in acre feet per season, with the maximum rates of diversion, allowed for the irrigation of the various subdivisions of said lands being given in the so-called individual columns under the general heading "Diversion Right" in said Priority Schedule; all to the end that the diversion rights of said canal companies may be adequately defined, and the individual rights of said defendant landowners to maintain, arrange or contract for, under applicable statutes and provisions of law, the diversion and carriage of water from the stream to said lands under and in accord with said rights may be identified and preserved; that the irrigation seasons referred to in this Article of the Decree, which shall as well apply to all rights adjudicated herein, is hereby defined as and determined to be the period beginning on January 1st of each year and ending on December 31st of the same year; that the Schedule above referred to and made part hereof is as follows:

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft. per sec.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
United States	Immemorial	Both	4S 4S	11E 8E	8 13	NW¼ SE¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal & Sanitas Diversion Dam.	25,000.	Gila River Indian Reservation				Pinal	For full statement of this right see Article VI (1).		210,000.		437.50
United States	1849	Both	At various points on the Gila River				Various Ditches and/or pumps & Ditches on or above Reservation	1,000.	San Carlos Indian Reservation				Gila & Graham	For full statement of this right see Article VI (2).		6,000.		12.50
United States	1868	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	937.00	Tracts described below:				Pinal	Ownership data as below:		5,742.00		11.96
								40.00	4S	9E	34	SW¼ SE¼	"	Minnie Lobb	240.00		.80	
								80.00	4S	9E	34	SW¼ SE¼	"	"	480.00		1.00	
								10.00	4S	9E	35	E½ SW¼ SE¼	"	Otis J. Douglas	60.00		.13	
								17.00	4S	9E	35	SW¼ SE¼	"	Gertrude B. McCue	104.00		.22	
								35.00	4S	9E	35	E½ SE¼	"	Lillian O'Connor	214.00		.45	
								72.00	4S	9E	35	W½ NE¼	"	Lois S. Angvin	432.00		.97	
								92.00	4S	10E	30	SW¼	"	Lillian O'Connor	576.00		1.19	
								115.80	4S	10E	31	NW¼ NW¼ & E½ NW¼	"	J. P. Byers	692.80		1.46	
								38.88	4S	10E	31	SW¼ NW¼	"	James D. Freeman	227.00		.48	
								34.12	4S	9E	2	NW¼ NE¼	"	Gertrude B. McCue	717.87		1.51	
								20.00	4S	9E	2	N½ NW¼ NE¼	"	Minnie Lobb	120.00		.25	
								20.00	4S	9E	2	N½ NE¼ NW¼	"	"	120.00		.25	
								14.00	4S	9E	2	W½ E½	"	Earl G. Clemens & Mark Twain Clemens	108.00		.23	
								20.00	4S	9E	7	N½	"	" " " " "	840.00		1.77	
								280.00	4S	9E	8	N½	"	" " " " "	1680.00		3.55	
United States	1868	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	847.22	Tracts described below:				Pinal	Ownership data as below:		5,145.96		10.73
								62.22	4S	9E	32	SW¼	"	James R. Trent	396.00		.75	
								5.00	4S	9E	34	NW¼ E½ SE¼	"	Edward Thary, Administrator of the estate of James Thary, deceased, Edward Thary, Administrator of the Estate of Della (Delphian) Thary, dec.				
								10.00	4S	9E	34	W½ SW¼	"	George W. Smith	96.00		.19	
								14.00	4S	9E	35	E½ E½ SW¼	"	James R. Trent	84.00		.18	
								14.00	4S	9E	35	E½ E½ NW¼	"	"	84.00		.18	
								32.00	4S	9E	35	W½ NE¼ NE¼	"	Ed O. Van Horn	192.00		.42	
								20.00	4S	9E	35	E½ NE¼ NE¼	"	Lewis Calhoun	120.00		.26	
								25.00	4S	9E	35	E½ E½ NW¼	"	Roland H. Moorehouse	223.84		.49	
								1.00	4S	9E	35	E½ E½ NW¼	"	Exonmaston Sweeny	6.04		.01	
								160.00	4S	10E	25	NW¼	"	State of Arizona	960.00		2.00	
								47.00	4S	10E	30	E½	"	Virginia Hahn	278.98		.79	
								48.00	4S	10E	30	E½	"	"	288.00		.84	
								80.00	4S	10E	32	E½ NE¼	"	Mary E. Stevens	480.00		1.00	
								60.00	4S	10E	31	N½ NE¼	"	Mary E. Truman	240.00		.50	
								15.00	4S	9E	2	W½ E½ NW¼	"	William C. Knight	84.72		.20	
								10.00	4S	9E	2	E½ NW¼	"	" " "	114.78		.24	
								5.00	4S	9E	2	E½ E½ E½ NW¼	"	Dugald Stewart	30.00		.06	
								40.00	4S	9E	2	SW¼ NW¼	"	J. J. Fraser	240.00		.50	

(Continued on next page)

Party entitled to divert from the stream	Date of priority	Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. P. & M. Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right accrued: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M. Twp.	Rge.	Sec.	Subdivision	County	Portion owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft. per sec. Individual	Total	Maximum rate of diversion in cu. ft. per sec. Individual	Total
United States (continued)	1870							4.10	15	21E	2	NE¼ NW¼ SW¼	Final	J. J. Fraser	24.08		.08	
								132.00	15	21E	2	SW¼ NE¼ NE¼ & SE¼ NE¼	"	" " "	730.00		1.80	
								34.20	15	21E	3	SE¼ NW¼ SW¼	"	" " "	114.02		.22	
								14.00	15	21E	3	W½ SE¼ SW¼	"	" " "	84.00		.14	
								17.00	15	21E	3	NE¼ SW¼	"	" " "	105.80		.32	
								18.00	15	21E	3	NW¼ SE¼	"	" " "	108.18		.32	
United States	1873	Both	42	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	655.00	Tracts described below:				Final	Ownership data as below:		2013.00		7.83
								10.00	43	8E	26	NW¼ SE¼	"	Jose S. Valle	60.00		.15	
								3.00	43	8E	26	NE¼ SE¼	"	" " "	18.00		.05	
								35.00	43	8E	26	S½ SE¼	"	Pedro S. Valle	180.00		.37	
								1.10	43	8E	26	NE¼ SE¼	"	" " "	7.00		.01	
								10.00	44	8E	26	E½ SE¼	"	Manuel S. Valle	60.00		.13	
								24.00	44	8E	26	NW¼ SE¼	"	Salvadore S. Valle	144.00		.48	
								40.00	44	8E	26	SW¼ SE¼	"	" " "	240.00		.88	
								10.00	43	8E	35	NW¼ SE¼	"	Roland H. Moorehouse	60.00		.12	
								2.00	43	8E	35	NE¼ SE¼	"	" " "	12.00		.03	
								17.00	43	8E	36	S½ SW¼	"	Lola LeGhorn	102.00		.31	
								22.00	43	8E	36	SE¼ NE¼ NW¼	"	Zel G. Van Haren	132.00		.34	
								35.00	43	8E	36	SW¼ NW¼	"	Gregorio Vasquez	210.00		.52	
								4.00	43	8E	36	SE¼ SW¼	"	" " "	24.00		.08	
								80.00	42	8E	1	W½ NW¼	"	H. B. Newman, Administrator of the Estate of E. H. Graves, deceased.	480.00		1.20	
								42.00	42	8E	1	S½ NW¼	"	" " "	252.00		.63	
								160.00	42	8E	1	NE¼	"	" " "	960.00		2.40	
								40.00	42	8E	1	NW¼ SW¼	"	" " "	240.00		.60	
								10.00	42	8E	1	NE¼ SW¼	"	" " "	60.00		.15	
Montezuma Canal Company	1872	Left	75	27E	17	NE¼ NE¼	Montezuma Canal	2730.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		182.00		.38
United States	1873	Left	42	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	160.00	Tracts described below:				Final	Ownership data as below:		960.00		2.40
								40.00	42	8E	28	SW¼ SW¼	"	W. S. Jackson & F. R. Maiden	240.00		.60	
								20.00	43	8E	33	NW¼ SE¼ SW¼	"	Jose S. Valle	120.00		.24	
								20.00	43	8E	33	SW¼ SE¼ SW¼	"	Pedro S. Valle	120.00		.24	
								80.00	43	8E	3	N½ NW¼	"	Gertrude B. McCue	480.00		1.20	
Montezuma Canal Company	1873	Left	75	27E	17	NE¼ NE¼	Montezuma Canal	2730.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		360.00		.72
United States	1874	Left	42	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence Casa Grande Canal	17.00	43	9E	2	S½ NE¼	Final	Thad Moore		102.00		.21
Montezuma Canal Company	1874	Left	75	27E	17	NE¼ NE¼	Montezuma Canal	2730.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		546.00		1.71
San Jose Canal Company	1874	Left	68	27E	24	SW¼ SW¼	San Jose Canal	2000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.20
Tidwell Canal Company	1874	Right	72	27E	9	SW¼ NW¼	Tidwell Canal	480.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		240.00		.63

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when patent/deed acquired lands.	Diversion right: For irrigation season by sec.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Union Canal Company	1874	Left	7S	27E	18	SE¼ NW¼	Union Canal	8874.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for ownership data.		1500.00		2.13
Sunflower Canal Company	1874	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	455.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for ownership data.		150.00		.21
Sunset Canal Company	1874	Right	18S	20W	31	SW¼ NW¼	Sunset Canal	602.30	Tracts described below:				Hidalgo	Ownership data as below:		3043.20		4.34
								10.00	18S	20W	7	N½ SW¼ SW¼	"	E. A. Brown	82.75		.12	
								37.30	19S	20W	7	SW¼ SW¼	"	" " "	323.88		.46	
								12.20	18S	20W	7	SE¼ SW¼	"	R. T. Jones	73.90		.11	
								15.30	19S	20W	17	SW¼ NW¼	"	Tybrio Gonzalez	79.80		.12	
								25.15	18S	20W	18	NE¼ NW¼	"	R. T. Jones	225.00		.32	
								28.60	18S	20W	18	NW¼ NW¼	"	" " "	184.00		.22	
								5.60	18S	20W	18	SE¼ NW¼	"	" " "	36.00		.05	
								28.25	18S	20W	18	NW¼ NE¼	"	C. M. Brooks	181.80		.31	
								21.00	18S	20W	18	SW¼ NE¼	"	" " "	135.00		.25	
								28.00	18S	20W	18	SE¼ NE¼	"	" " "	168.00		.38	
								12.75	19S	20W	18	NE¼ NE¼	"	" " "	78.20		.18	
								6.95	18S	20W	18	NW¼ NW¼	"	C. F. Houlihan	38.40		.07	
								7.20	18S	21W	11	SE¼ NE¼	"	Willard R. Jones	43.20		.08	
								4.35	18S	21W	11	NE¼ SE¼	"	" " "	26.10		.05	
								.65	18S	21W	11	NE¼ NW¼	"	Ralph Richardson	3.90		.01	
								1.30	19S	21W	11	SE¼ NE¼	"	John R. Jones	7.80		.02	
								3.50	18S	21W	11	NE¼ SE¼	"	" " "	21.00		.04	
								.15	18S	21W	11	SE¼ NE¼	"	M. L. Harris	.60		.01	
								4.00	18S	21W	11	NE¼ SE¼	"	" " "	24.00		.04	
								4.00	18S	21W	11	SE¼ NE¼	"	J. Alfred Mortensen	24.00		.04	
								2.80	18S	21W	11	SW¼ NE¼	"	" " "	16.80		.03	
								1.20	18S	21W	11	NE¼ NW¼	"	Leslie B. Payne	7.20		.01	
								.40	19S	21W	11	NW¼ NW¼	"	" " "	2.40		.01	
								.55	18S	21W	11	NE¼ NE¼	"	Perley P. Jones	3.30		.01	
								4.15	19S	21W	11	SE¼ NE¼	"	" " "	24.90		.04	
								4.80	19S	21W	11	SW¼ NE¼	"	Hiram K. Mortensen	28.80		.04	
								4.10	19S	21W	11	NE¼ SE¼	"	J. E. Carden	24.60		.04	
								7.00	19S	21W	12	SW¼ NW¼	"	M. L. Harris	42.00		.06	
								1.00	18S	21W	12	NW¼ SW¼	"	" " "	6.00		.01	
								2.50	19S	21W	13	NW¼ SW¼	"	J. Alfred Mortensen	15.00		.02	
								23.10	19S	21W	12	SE¼ SE¼	"	Orson J. Richens	138.60		.20	
								11.50	19S	21W	13	NW¼ NE¼ SE¼	"	Nancy O. Pace	69.00		.10	
								45.60	19S	21W	24	NW¼ NE¼	"	" " "	273.60		.39	
								20.45	19S	21W	12	SW¼ SE¼	"	" " "	122.70		.18	
								5.85	19S	21W	12	NW¼ SW¼	"	J. E. Carden	40.95		.06	
								20.00	19S	21W	12	SW¼ NE¼ SE¼	"	Carl M. Donaldson	120.00		.17	
								23.70	19S	21W	12	NE¼ SW¼	"	James A. Mitchell	172.20		.25	
								3.00	19S	21W	12	NW¼ SW¼	"	" " "	21.00		.03	
								2.50	19S	21W	12	SW¼ SW¼	"	" " "	24.00		.03	
								13.90	19S	21W	12	SE¼ SW¼	"	" " "	83.40		.12	
								13.10	19S	21W	13	NE¼ NE¼	"	C. F. Houlihan	73.90		.10	
United States	1878	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence Canal Grande Canal.	309.00	Tracts described below:				Final	Ownership data as below:		1884.00		2.88
								148.00	4S	10E	36	S½	"	"				
								158.00	4S	10E	31	S½	"	(John Tidwell & E. L. Tidwell, Jr. Administrators (of the estate of E. L. (Tidwell, deceased.	884.00		1.66	
															960.00		2.00	
Montezuma Canal Company	1875	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		1908.00		5.73

128

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands whose jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft. Individual	Total	Maximum rate of diversion in cu. ft. per sec. Individual	Total
San Jose Canal Company	1873	Left	6S	27E	26	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		1200.00		2.50
Tidwell Canal Company	1873	Right	7S	27E	3	SE¼ NW¼	Tidwell Canal	450.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		360.00		.90
Union Canal Company	1875	Left	7S	27E	18	SE¼ NW¼	Union Canal	3675.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		150.00		.35
Sunflower Canal Company	1875	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		810.00		1.66
Graham Canal Company	1875	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2377.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		180.00		.35
United States	1876	Both	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence - Casa Grande Canal	485.00	Tracts described below:				Final	Ownership data as below:		2730.00		5.69
								40.00	4S	10E	30	S½ NE¼	"	Rita Marquez	480.00		1.00	
								20.00	4S	10E	31	W½ SW¼ NW¼	"	"	120.00		.25	
								84.00	4S	10E	32	E½ W½ NW¼	"	Donald F. Reed	210.00		.44	
								40.00	4S	10E	30	N½ NW¼ NE¼	"	John B. Mieham	240.00		.50	
								121.00	5S	8E	5	NE¼ NW¼ & S½ NW¼	"					
								160.00	5S	8E	5	NE¼	"	Edith Knappenberger & Frank Knappenberger	720.00		1.50	
															960.00		2.00	
Montezuma Canal Company	1873	Left	7S	27E	19	NE¼ NE¼	Montezuma Canal	3705.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		725.00		1.50
San Jose Canal Company	1873	Left	6S	27E	26	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		1800.00		3.75
Tidwell Canal Company	1873	Right	7S	27E	3	SE¼ NW¼	Tidwell Canal	450.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		120.00		.25
Union Canal Company	1875	Left	7S	27E	18	SE¼ NE¼	Union Canal	3675.00	See Table No. 4 for detailed description for these lands.				Graham	See Table No. 4 for Ownership data.		315.00		.65
Sunflower Canal Company	1875	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		810.00		1.66
Graham Canal Company	1875	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2377.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		170.00		.35
Fort Thomas Consolidated Canal Company	1876	Left	6S	24E	6	NE¼ NW¼	Fort Thomas Consolidated Canal	2290.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		240.00		.83
United States	1877	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence - Casa Grande Canal	185.97	Tracts described below:				Final	Ownership data as below:		865.94		2.00
								20.00	4S	10E	30	S½ SE¼	"	Vera M. Richardson	185.66		.43	
								58.33	4S	10E	29	S½ SE¼	"	Natalia M. White	310.66		.67	
								30.00	4S	10E	29	N½ SW¼ NE¼	"	John B. Mieham	120.00		.25	
								40.00	4S	10E	29	S½ NW¼ NE¼	"	" "	240.00		.50	
								72.00	4S	10E	18	E½ NE¼	"	Rafael A. Lovera	120.00		.25	

129

Party entitled to divert from the stream	Date of priority	Point of diversion					Name of diverting and/or carrying structure	Lands for which right acquired						Parties owning said lands when installation acquired lands	Diversion right			
		Side of stream	Location Referred to G. & S. R. B. & M. or N. M. D. & M.					Number of acres	Description Referred to G. & S. R. B. & M. or N. M. D. & M.				County		For irrigation, ounces in sq. ft.		Maximum rate of diversion in cu. ft. per sec.	
			Twp.	Rge.	Sec.	Subdivision			Twp.	Rge.	Sec.	Subdivision			Individual	Total	Individual	Total
Montezuma Canal Company	1877	Left	7S	27E	17	NE ¼ NE¼	Montezuma Canal	2738.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		2150.00		4.30
San Jose Canal Company	1877	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	3068.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		1700.00		3.40
Tidwell Canal Company	1877	Right	7S	27E	1	SE¼ NW¼	Tidwell Canal	410.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		205.00		.82
Union Canal Company	1877	Left	7S	27E	18	SE¼ NW¼	Union Canal	3473.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		600.00		1.44
Sunflower Canal Company	1877	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		80.00		.08
Graham Canal Company	1877	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2377.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		68.00		.13
Fort Thomas Consolidated Canal Company.	1877	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2000.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		200.00		.65
Brown Canal Company	1877	Right	6S	22E	30	SE¼ SE¼	Brown Canal	822.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		90.00		.18
Joseph J. Andersen	1877	Right	4S	16E	7	NW¼ SE¼	Andersen Ditch	37.50	4S	14E	12	SW¼ SE¼	Pinal	Joseph J. Andersen		187.50		.45
Dodge-Nevada Canal Company	1877	Left	8S	21E	20	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		450.00		.88
United States	1878	Left	4S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence Casa Grande Canal.	80.00	4S	10E	12	NW¼ SW¼	Pinal	Donald F. Reed		160.00		.87
Montezuma Canal Company	1878	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	2150.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		1200.00		2.40
San Jose Canal Company	1878	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.20
Tidwell Canal Company	1878	Right	7S	27E	1	SE¼ NW¼	Tidwell Canal	410.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		180.00		.87
Union Canal Company	1878	Left	7S	27E	18	SE¼ NW¼	Union Canal	3473.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		1944.00		4.86
Sunflower Canal Company	1878	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		30.00		.06

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Graham Canal Company	1878	Right	7S	24E	9	NE¼ NW¼	Graham Canal	2477.92	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		60.00		.73
Brown Canal Company	1878	Right	6S	25E	30	SE¼ SE¼	Brown Canal	820.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		60.00		.13
Dodge-Nevada Canal Company	1878	Left	6S	24E	29	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		60.00		.13
Nevada Consolidated Copper Company	1879	Right	4S	16E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for Industrial, Municipal, Domestic and related purposes.				Gila	For further definition of this right see Article IX.		800.00		.81
			3S	16E	22	NE¼ NW¼												
Nevada Consolidated Copper Company.	1879	Right	4S	16E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for Industrial, Municipal, Domestic and related purposes.				Gila	For further definition of this right see Article IX.		875.00		1.70
			3S	16E	23	NE¼ NW¼												
United States	1879	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion dam & Florence Coop. Grande Canal	310.00	Tracts described below:				Final	Ownership data as below:		1260.00		2.63
								40.00	4S	19E	28	NW¼ SE¼	"	State of Arizona	240.00		.50	
								40.00	4S	19E	28	NE¼ SE¼	"	H. W. Johns	240.00		.50	
								80.00	4S	19E	21	NW¼	"	Mary T. Chaney	480.00		1.00	
								40.00	4S	19E	21	NW¼ SW¼	"	S. W. Newman	240.00		.50	
								10.00	4S	19E	21	NW¼ SW¼ SW¼	"	" " "	60.00		.13	
Montezuma Canal Company	1879	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3738.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		1800.00		3.75
San Jose Canal Company	1879	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	2000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		1200.00		2.50
Tidwell Canal Company	1879	Right	7S	27E	9	SE¼ NW¼	Tidwell Canal	480.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		120.00		.25
Union Canal Company	1879	Left	7S	27E	15	SE¼ NW¼	Union Canal	3873.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		81.00		.96
Sunflower Canal Company	1879	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	480.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		32.00		.80
Graham Canal Company	1879	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		170.00		.28
Brown Canal Company	1879	Right	6S	25E	30	SE¼ SE¼	Brown Canal	820.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		60.00		.19
Dodge-Nevada Canal Company	1879	Left	6S	24E	20	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		120.00		.30
United States	1880	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence Coop. Grande Canal	87.00	4S	19E	29	N½ SW¼	Final	John Sanderson		222.00		.46

131

Party entitled to divert from the stream	Date of priority	Point of diversion: Bank of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft. Individual	Total	Maximum rate of diversion in cu. ft. per sec. Individual	Total
Montezuma Canal Company	1880	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		840.00		1.13
San Jose Canal Company	1880	Left	6S	27E	34	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.80
Tidwell Canal Company	1880	Right	7S	27E	9	NE¼ NW¼	Tidwell Canal	430.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		240.00		.60
Union Canal Company	1880	Left	7S	27E	18	SE¼ NW¼	Union Canal	6475.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		1092.00		2.39
Graham Canal Company	1880	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2577.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		300.00		.88
Brown Canal Company	1880	Right	6S	26E	36	SE¼ SE¼	Brown Canal	820.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		80.00		.13
Dodge-Nevada Canal Company.	1880	Left	6S	26E	20	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		200.00		.63
Smithville Canal Company	1880	Left	6S	26E	35	NW¼ NE¼	Smithville Canal	1780.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		2135.00		4.28
Nevada Consolidated Copper Company	1880	Right	6S	22E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for industrial, municipal, domestic and related purposes.				Gila	For further definition of this right see Article IX.		780.00		1.63
			6S	18E	28	NE¼ NW¼												
Joseph J. Anderson	1880	Right	6S	18E	7	NW¼ SE¼	Anderson Ditch	171.43	Tracts described below:				Pinal	Ownership data as below: Joseph J. Anderson		1028.58		2.14
								87.10	4S	14E	32	NE¼ SE¼	"	" " "	111.40		.48	
								40.00	4S	14E	32	SE¼ NE¼	"	" " "	240.00		.98	
								23.33	4S	14E	33	NE¼ NE¼	"	" " "	140.00		.24	
								15.80	4S	14E	33	SW¼ NE¼	"	" " "	135.80		.24	
								15.00	4S	14E	33	SW¼ NW¼	"	" " "	90.00		.16	
								29.70	4S	14E	33	NW¼ SW¼	"	" " "	184.20		.32	
								7.10	4S	14E	33	SW¼ SW¼	"	" " "	42.60		.08	
Montezuma Canal Company	1881	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		180.00		.38
San Jose Canal Company	1881	Left	6S	27E	34	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.20
Tidwell Canal Company	1881	Right	7S	27E	8	SE¼ NW¼	Tidwell Canal	430.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		135.00		.30
Union Canal Company	1881	Left	7S	27E	18	SE¼ NW¼	Union Canal	6475.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		1295.00		2.71
Sunflower Canal Company	1881	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	480.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		96.00		.13
Graham Canal Company	1881	Right	7S	26E	9	NE¼ SW¼	Graham Canal	2577.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		180.00		.37
Brown Canal Company	1881	Right	6S	26E	36	SE¼ SE¼	Brown Canal	820.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		80.00		.13

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein.	Diversion right: Per irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in c. f. s. per acre: Individual	Total
Dodge-Nevada Canal Company	1881	Left	6S	24E	30	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		668.00		1.27
Smithville Canal Company	1881	Left	6S	23E	32	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		1809.00		3.73
Curtis Canal Company	1881	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1680.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		180.00		.39
Sunset Canal Company	1881	Right	15S	20W	31	SW¼ NW¼	Sunset Canal	661.40	Tracts described below:				Hidalgo	Ownership data as below:		2768.40		5.77
								10.00	16S	21W	2	SW¼ SE¼	"	Junius E. Payne	42.40		.12	
								28.40	16S	21W	2	SE¼ SW¼	"	T. V. Jones	171.00		.36	
								1.10	16S	21W	2	NW¼ SW¼	"	M. B. Eshels	6.60		.01	
								12.60	16S	21W	2	SW¼ SW¼	"		75.60		.16	
								14.80	16S	21W	2	SW¼ SW¼	"	Byron Eshels	87.00		.18	
								4.80	16S	21W	2	NW¼ SW¼	"	Henry L. Smith	28.80		.06	
								8.20	16S	21W	2	SW¼ SW¼	"		49.20		.10	
								4.80	16S	21W	2	SE¼ NE¼	"	W. P. Porter	41.40		.09	
								20.10	16S	21W	2	NE¼ SE¼	"		120.60		.25	
								7.40	16S	21W	2	SE¼ SE¼	"		44.40		.09	
								6.20	16S	21W	2	SE¼ NW¼	"	Peter Mortensen	37.20		.08	
								16.80	16S	21W	2	SW¼ NW¼	"	J. R. Beavers	100.80		.21	
								8.20	16S	21W	2	SE¼ NW¼	"	O. Mortensen	49.20		.08	
								5.70	16S	21W	2	NE¼ SE¼	"	Henry L. Smith	42.20		.11	
								8.40	16S	21W	2	SE¼ SE¼	"		33.60		.05	
								22.30	16S	21W	2	SW¼ NE¼	"	George H. Cooper, Jr., Administrator of the Estate of George Cooper, deceased.	134.30		.29	
								4.20	16S	21W	11	NE¼ NE¼	"	Junius E. Payne	11.20		.07	
								23.40	16S	21W	11	NW¼ NW¼	"	Hans Mortensen	122.80		.26	
								4.00	16S	21W	11	SE¼ NE¼	"	Willard E. Jones	24.00		.06	
								.60	16S	21W	11	SE¼ NE¼	"	John B. Jones	3.60		.01	
								2.00	16S	21W	11	SE¼ NE¼	"	J. Alfred Mortensen	18.00		.04	
								11.80	16S	21W	12	SW¼ NE¼	"		70.80		.15	
								4.00	16S	21W	12	NE¼ NE¼	"	Leslie B. Payne	24.00		.06	
								23.80	16S	21W	12	SW¼ NE¼	"	M. W. Jensen	138.80		.30	
								3.80	16S	21W	12	NE¼ NE¼	"	Farley P. Jones	22.80		.05	
								3.10	16S	21W	11	SE¼ NE¼	"		18.60		.03	
								1.80	16S	21W	11	SE¼ NE¼	"	Hans Mortensen	21.00		.04	
								23.40	16S	21W	13	NW¼ NE¼	"	T. W. Jones	237.00		.49	
								40.20	16S	21W	13	NE¼ NW¼	"	Hans Andersen & Dufort Johnson	240.00		.49	
								30.10	16S	21W	13	SE¼ NW¼	"		181.00		.37	
								4.00	16S	21W	11	SW¼ NW¼	"	Willard E. Jones	24.00		.06	
								.10	16S	21W	14	NE¼ NE¼	"	J. Alfred Mortensen	.60		.01	
								3.20	16S	21W	13	NW¼ NW¼	"	Ralph Richardson	19.20		.04	
								3.20	16S	21W	13	SW¼ NW¼	"	John B. Jones	19.20		.04	
								1.60	16S	21W	13	NW¼ SW¼	"	M. L. Harris	9.60		.02	
								1.80	16S	21W	13	NW¼ SW¼	"	J. Alfred Mortensen	11.40		.02	
								.20	16S	21W	13	SE¼ SW¼	"	Owen J. Stokes	1.20		.01	
								12.30	16S	21W	13	SW¼ SW¼	"	Nancy O. Pace	82.80		.17	
								.70	16S	21W	13	SW¼ NW¼	"	Hans Mortensen	4.20		.01	
								1.20	16S	21W	13	SW¼ NW¼	"	J. E. Carlin	8.00		.02	
								4.00	16S	21W	13	NW¼ SW¼	"		24.00		.06	
								8.00	16S	21W	13	NE¼ SW¼	"	James A. Mitchell	48.00		.10	
								5.00	16S	21W	13	NW¼ SW¼	"		30.00		.06	
								12.00	16S	21W	13	SW¼ SW¼	"		72.00		.14	
								3.80	16S	21W	13	NE¼ NE¼	"	C. F. Houlihan	22.80		.05	
								4.00	16S	21W	13	NW¼ NE¼	"		24.00		.06	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or H. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or H. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Portion carrying said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company	1882	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3750.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		940.00		1.13
San Jose Canal Company	1882	Left	6S	27E	30	SW¼ SW¼	San Jose Canal	8100.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		1900.00		2.80
Tidwell Canal Company	1882	Right	7S	27E	3	SE¼ NW¼	Tidwell Canal	400.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		300.00		.60
Union Canal Company	1882	Left	7S	27E	17	SE¼ NW¼	Union Canal	8475.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		940.00		1.27
Graham Canal Company	1882	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2577.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		840.00		1.15
Fort Thomas Consolidated Canal Company	1882	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	7700.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		240.00		.50
Brown Canal Company	1882	Right	6S	28E	22	SE¼ SE¼	Brown Canal	822.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		120.00		.26
Dodge-Nevada Canal Company	1882	Left	6S	25E	20	NE¼ NW¼	Dodge-Nevada Canal	1560.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		540.00		1.12
Smithville Canal Company	1882	Left	6S	25E	28	SW¼ NE¼	Smithville Canal	3780.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		1807.00		3.13
Curtis Canal Company	1882	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1660.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		480.00		1.09
Meddis Canal Company	1882	Left	10S	21W	11	NW¼ SE¼	Meddis Canal	1.00	10S	21W	2	NW¼ SW¼	Hidalgo	G. W. Johnson		6.00		.01
Sunset Canal Company	1883	Right	10S	20W	31	SW¼ NW¼	Sunset Canal	75.00 7.00 14.00	Tracts described below: 10S 10S	21W 21W	2 2	SE¼ NW¼ NE¼ SW¼	Hidalgo "	Ownership data as below: Peter Mortensen " "	43.00 117.00	160.00	.09 .26	.22
Cooper & Windham Canal Company	1883	Right	10S	21W	11	NW¼ SE¼	Cooper & Windham Canal	57.00 8.00 13.00 2.00 28.00 4.00	Tracts described below: 10S 10S 10S 10S 10S 10S	21W 21W 21W 21W 21W 21W	2 2 2 2 2 2	SW¼ NW¼ NE¼ SW¼ SE¼ NW¼ NW¼ SE¼ SE¼ NE¼	Hidalgo " " " " "	Ownership data as below: J. R. Beaver G. Mortensen " " George H. Cooper, Jr., Administrator of the Estate of George Cooper, deceased. J. R. Beaver	85.40 31.00 14.40 168.00 25.80	340.60	.12 .03 .05 .36 .06	.72
Montezuma Canal Company	1883	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3750.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		300.00		.63
San Jose Canal Company	1883	Left	6S	27E	30	SW¼ SW¼	San Jose Canal	8000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.30
Tidwell Canal Company	1883	Right	7S	27E	3	SE¼ NW¼	Tidwell Canal	480.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		60.00		.13
Union Canal Company	1883	Left	7S	27E	18	SE¼ NW¼	Union Canal	8475.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		3575.00		7.45
Sunflower Canal Company	1883	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		20.00		.00

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac./ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Graham Canal Company	1882	Right	7S	26E	6	NE¼ NW¼	Graham Canal	3877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		884.00		1.76
Fort Thomas Consolidated Canal Company	1882	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		660.00		1.86
Brown Canal Company	1883	Right	6S	22E	36	SE¼ SE¼	Brown Canal	830.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		160.00		.32
Dodge-Nevada Canal Company	1882	Left	6S	24E	20	NE¼ NW¼	Dodge-Nevada Canal	1260.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		840.00		1.12
Smithville Canal Company	1882	Left	6S	24E	34	SW¼ NE¼	Smithville Canal	1700.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		900.00		1.55
Curtis Canal Company	1882	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1680.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		1260.00		2.44
United States	1884	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence Com Grande Canal	20.00	4S	10E	29	SW¼ SE¼ & NW¼ SE¼	Pinal	John B. Mickey		113.96		.23
Montezuma Canal Company	1884	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		360.00		.90
San Jose Canal Company	1884	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		1200.00		2.60
Tidwell Canal Company	1884	Right	7S	27E	8	SE¼ NW¼	Tidwell Canal	480.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		92.00		.18
Union Canal Company	1884	Left	7S	27E	18	SE¼ NW¼	Union Canal.	6875.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		3246.00		5.51
Nevada Consolidated Copper Company	1884	Right	6S	16E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for Industrial, Municipal, Domestic & related purposes.				Gila	For further definition of this right see Article IX.		960.00		2.00
			5S	16E	23	NE¼ NW¼												
Joseph J. Anderson	1884	Right	4S	14E	7	NW¼ SE¼	Anderson Ditch.	98.70	Tracts described below:				Pinal	Ownership data as below:		592.20		1.23
								12.70	4S	14E	25	NW¼ NE¼	"	Joseph J. Anderson	74.20		.15	
								82.00	4S	14E	36	SW¼ NE¼	"	" " "	180.00		.37	
								24.00	4S	14E	36	NE¼ NW¼	"	" " "	136.00		.28	
								80.00							180.00		.37	
Sunflower Canal Company	1884	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	460.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		66.00		.13
Graham Canal Company	1884	Right	7S	26E	9	NE¼ NW¼	Graham Canal.	3877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		90.00		.13
Fort Thomas Consolidated Canal Company	1884	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		744.00		1.44

135

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft. per sec.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Brown Canal Company	1884	Right	6S	28E	36	SE¼ SE¼	Brown Canal	320.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		300.00		.63
Dodge-Nevada Canal Company	1884	Left	6S	28E	20	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		540.00		1.12
Smithville Canal Company	1884	Left	6S	25E	33	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		480.00		1.00
Curtis Canal Company	1884	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1680.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		3970.00		8.26
Dumas Canal Company	1884	Left	5S	22E	36	NE¼ SW¼	Dumas Canal	40.00	Tracts described below:				Gonzales	Ownership data as below:		240.00		.50
								9.00	5S	23E	19	NE¼ SE¼	"	P. M. Craig	54.00		.11	
								5.80	5S	23E	18	NE¼ SE¼	"	George Utter	34.80		.07	
								2.20	5S	23E	18	SE¼ SE¼	"	P. M. Craig	13.20		.03	
								1.10	5S	23E	20	SW¼ SW¼	"	J. W. Carter & M. H. Brooks	6.60		.01	
								10.90	5S	23E	29	SE¼ SW¼	"	" " " " " "	65.40		.14	
								2.20	5S	23E	29	NE¼ NW¼	"	" " " " " "	13.20		.03	
								8.70	5S	23E	29	NW¼ NW¼	"	" " " " " "	52.20		.11	
United States	1886	Left	4S	21E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence Casa Grande Canal	310.00	5S	22E	1	SE¼ N. part	Pinal	Bonnie Ulmer		698.00		1.38
Montezuma Canal Company	1883	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		280.00		.60
San Jose Canal Company	1885	Left	6S	27E	30	SW¼ SW¼	San Jose Canal	2200.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.23
Union Canal Company	1885	Left	7S	27E	14	SE¼ NW¼	Union Canal	3278.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		3432.00		7.10
Sunflower Canal Company	1883	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		60.00		.13
Graham Canal Company	1883	Right	7S	26E	9	NE¼ NW¼	Graham Canal	3277.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		594.00		1.20
Fort Thomas Consolidated	1883	Left	6S	24E	6	NE¼ NW¼	Fort Thomas Consolidated Canal	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		48.00		.01
Brown Canal Company	1885	Right	6S	28E	36	SE¼ SE¼	Brown Canal	320.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		240.00		.50
Dodge-Nevada Canal Company	1885	Left	6S	28E	20	NE¼ NW¼	Dodge-Nevada Canal	1280.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		540.00		1.10
Smithville Canal Company	1885	Left	6S	25E	33	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		540.00		1.10
Curtis Canal Company	1885	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1680.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		1700.00		3.49

136

Party entitled to divert from the stream	Date of priority	Point of diversion: Bdy. of stream	Point of diversion: Location referred to G. & S. R. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired: Lands	Diverting right: For irrigation season to cu. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Valley Canal Company	1865	Right	18S	21W	4	NE¼ NW¼	Valley Canal	77.80	Tracts described below:				Gunnison	Ownership data as below:		485.00		.97
								18.90	18S	21E	11	SE¼ SE¼	"	J. F. McGrath	112.40		.24	
								80.20	18S	21E	12	SW¼ SW¼	"	" " "	160.00		.37	
								.80	18S	21E	12	SW¼ SE¼	"	" " "	1.80		.01	
								22.80	18S	21E	13	SE¼ SW¼	"	" " "	135.00		.78	
								5.80	18S	21E	13	NE¼ NW¼	"	" " "	31.20		.06	
								.80	18S	21E	13	NW¼ NW¼	"	" " "	2.60		.01	
Duncan Canal Company	1885	Left	8S	22E	28	NE¼ SW¼	Duncan Canal	131.90	Tracts described below:				Gunnison	Ownership data as below:		735.80		1.00
								10.10	8S	22E	19	SE¼ SE¼	"	Rebecca Richardson	60.60		.13	
								31.80	8S	22E	20	SW¼ SW¼	"	" " "	188.00		.45	
								8.80	8S	22E	29	SE¼ SW¼	"	" " "	14.00		.03	
								1.00	8S	22E	29	SE¼ SW¼	"	Sarah L. Richardson	6.00		.01	
								2.70	8S	22E	29	NW¼ NE¼	"	" " "	16.20		.03	
								53.00	8S	22E	29	NE¼ NW¼	"	" " "	226.00		.49	
								7.20	8S	22E	29	NW¼ NW¼	"	" " "	43.00		.09	
								6.00	8S	22E	29	NW¼ NW¼	"	Rebecca Richardson	42.00		.12	
								2.40	8S	22E	29	SW¼ NW¼	"	Sarah L. Richardson	14.40		.03	
								24.00	8S	22E	29	SE¼ NW¼	"	" " "	143.00		.31	
								1.00	8S	22E	30	NE¼ NE¼	"	Rebecca Richardson	8.00		.02	
R. C. Gilliland	1885	Right	6S	80E	1	NE¼ SE¼	Pumping Plant Ditch	8.00	Tracts described below:				Gunnison	Ownership data as below:		53.40		.12
								4.00	6S	80E	1	NE¼ SW¼	"	R. C. Gilliland	24.00		.05	
								5.00	6S	80E	1	NW¼ SE¼	"	" " "	34.40		.07	
Laura Short	1888	Left	6S	80E	1	NE¼ NE¼	Pumping Plant	54.80	Tracts described below:				Gunnison	Ownership data as below:		318.00		.49
								2.00	6S	80E	36	SW¼ SE¼	"	Laura Short	21.00		.04	
								27.20	6S	80E	36	SE¼ SE¼	"	" " "	163.20		.34	
								.70	6S	80E	1	NE¼ NE¼	"	" " "	.60		.01	
								1.20	6S	80E	1	NE¼ NE¼	"	" " "	7.20		.02	
								4.40	6S	80E	1	NW¼ NE¼	"	" " "	26.40		.05	
Cooper & Windham Canal Company	1885	Right	18S	21W	11	NW¼ SE¼	Cooper & Windham Canal	166.30	Tracts described below:				Ridgway	Ownership data as below:		997.20		2.43
								4.00	18S	21W	31	Lot 4	"	Owen Lund	24.00		.05	
								15.00	18S	21W	32	SW¼ SW¼	"	G. Lynn Walsh	93.00		.19	
								30.10	18S	21W	32	SW¼ SE¼	"	Florence R. Bradford	186.00		.38	
								1.00	18S	21W	32	SE¼ SE¼	"	A. C. Grewell	11.00		.02	
								7.00	18S	21W	33	SE¼ SW¼	"	G. Pugh	44.00		.09	
								22.20	18S	21W	33	SW¼ SW¼	"	R. H. Priestner	133.20		.27	
								2.00	18S	21W	33	SW¼ SE¼	"	R. H. Lent	12.00		.02	
								17.00	18S	21W	33	SE¼ SW¼	"	H. G. Davidson	107.40		.22	
								.80	18S	21W	33	SW¼ SW¼	"	A. C. Grewell	4.80		.01	
								4.00	18S	21W	6	Lot 1	"	J. R. Sawyers	27.80		.06	
								21.00	18S	21W	6	Lot 2	"	" " "	130.80		.27	
								8.00	18S	21W	6	SE¼ NE¼	"	" " "	44.80		.09	
								11.20	18S	21W	6	Lot 2	"	H. G. Davidson	67.20		.14	
								1.00	18S	21W	6	Lot 4	"	A. C. Grewell	6.00		.01	
								5.00	18S	21W	6	Lot 4	"	G. Lynn Walsh	30.00		.06	
								2.00	18S	21W	6	Lot 3	"	Florence R. Bradford	11.80		.02	
								2.00	18S	21W	6	Lot 1	"	A. C. Grewell	12.00		.02	
								6.00	18S	21W	6	Lot 1	"	Owen Lund	37.00		.10	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	½ Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Sunset Canal Company	1885	Right	18S	20W	21	SW¼ NW¼	Sunset Canal	22.70	Tracts described below:				Hidalgo	Ownership data as below:		138.20		.38
								17.20 & 5.50	18S	21W	22	SE¼ SE¼ Lot 1	"	Mrs. T. M. Williamson	108.70 33.00		.21 .97	
Nevada Consolidated Copper Company.	1885	Right	18	18E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for industrial, Municipal, Domestic and related purposes.				Gila	For further definition of this right see Article IX.		200.00		.75
			17	18E	27	NE¼ NW¼												
United States	1886	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion dam & Florence Casa Grande Canal	34.00	4S	9E	23	S½ SE¼	Pinal	Thomas A. Crow		144.00		.20
Montezuma Canal Company	1886	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3790.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		960.00		3.60
Union Canal Company	1886	Left	7S	27E	31	SE¼ NW¼	Union Canal	5475.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		3972.00		8.26
Sunflower Canal Company	1886	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		60.00		.13
Graham Canal Company	1886	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2877.90	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		1560.00		3.44
Fort Thomas Consolidated Canal Company	1886	Left	5S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		916.00		1.10
Brown Canal Company	1886	Right	6S	26E	30	SE¼ SE¼	Brown Canal	250.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		180.00		.38
Dodge-Nevada Canal Company	1886	Left	8S	21E	26	NE¼ NW¼	Dodge-Nevada Canal	1230.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		840.00		1.12
Smithville Canal Company	1886	Left	8S	23E	34	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		480.00		1.00
Curtis Canal Company	1886	Right	8S	24E	12	NW¼ NW¼	Curtis Canal	1440.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		600.00		1.25
Duncan Canal Company	1886	Left	8S	32E	28	NE¼ SW¼	Duncan Canal	50.32	Tracts described below:				Greenlee	Ownership data as below:		182.10		.48
								.02	8S	32E	28	SW¼NE¼ & NW¼SE¼	"	C. O. Martin	2.60		.01	
								1.10	8S	32E	28	SW¼ NE¼	"	T. J. Branyon	6.60		.01	
								8.32	8S	32E	28	SW¼ NE¼	"	" " "	52.80		.11	
								.28	8S	32E	28	SW¼ NE¼	"	J. F. Oberholzer	1.68		.01	
								.20	8S	32E	28	SW¼ NE¼	"	W. U. Philpott	1.20		.01	
								.20	8S	32E	28	SW¼ NE¼	"	" "	1.20		.01	
								.16	8S	32E	28	NW¼ NE¼	"		1.76		.00	
								.16	8S	32E	28	NW¼ NE¼	"	David Davis	2.68		.02	
								.36	8S	32E	28	NW¼ NE¼	"	J. A. Martin	1.08		.01	
								.32	8S	32E	28	NW¼ NE¼	"	J. R. Foster	2.00		.01	
								2.32	8S	32E	28	NW¼ NE¼	"	Mrs. S. L. Kemp	13.80		.03	
								.32	8S	32E	28	NW¼ NE¼	"	Mrs. Maggie Carthen	4.60		.01	
								.20	8S	32E	28	SW¼ SE¼	"	J. A. Martin	1.20		.01	
								.32	8S	32E	28	SE¼ SE¼	"	Mrs. M. A. Doss	1.88		.01	

(Continued on next page.)

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. for N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu.-ft. per sec.: Individual	Total
								1.00	8S	27E	10	NW¼ SE¼	Grenales	John Evans	0.00		.01	
								.40	8S	27E	15	SE¼ SE¼	"	Ernest V. Romney & Eugene Romney	2.40		.03	
								2.00	8S	27E	15	SW¼ NE¼	"	W. U. Philpott	12.00		.02	
								2.00	8S	27E	15	SW¼ NE¼	"	Webb Harris	1.80		.01	
								2.00	8S	27E	15	NW¼ SE¼	"	R. F. Billingsley	10.20		.04	
								1.60	8S	27E	15	NW¼ SE¼	"	" "	0.00		.02	
								.60	8S	27E	14	NW¼ SE¼	"	Mrs. T. M. Williamson	4.80		.01	
								.60	8S	27E	14	NW¼ SE¼	"	Page E. Windham	1.40		.01	
								.60	8S	27E	14	NW¼ SE¼	"	Mrs. Tom Carter	4.80		.01	
								.60	8S	27E	14	NW¼ SE¼	"	Thomas E. Johnson	1.60		.01	
								.60	8S	27E	14	NW¼ SE¼	"	O. Reese	4.80		.01	
								.20	8S	27E	14	NE¼ SE¼	"	W. F. Shriver	1.60		.01	
								.20	8S	27E	14	SE¼ SE¼	"	Mary E. Campbell	1.60		.01	
								.80	8S	27E	14	SE¼ SE¼	"	Mary Ann Cheatham, A. D. Cheatham, E. C. Cheatham, E. V. Cheatham, L. M. Cheatham & Lila Williams	3.00		.01	
								.20	8S	27E	14	SE¼ SE¼	"	Mrs. Jas. I. Cohn	1.20		.01	
								.80	8S	27E	14	SE¼ SE¼	"	James A. Gamble	4.40		.01	
								.40	8S	27E	14	SE¼ SE¼	"	Mrs. Ethel Rainbolt	2.00		.01	
Valley Canal Company	1886	Right	19S	21W	4	NE¼ NW¼	Valley Canal	81.20	Tracts described below:				Grenales	Ownership data as below:		487.20		1.01
								4.00	8S	22E	28	SW¼ NE¼	"	Earl Girard	24.00		.11	
								4.00	8S	22E	28	SW¼ NE¼	"	" "	48.00		.19	
								21.00	8S	22E	28	NE¼ NW¼	"	" "	177.00		.37	
								34.70	8S	22E	28	SE¼ NW¼	"	" "	208.20		.43	
Meddle Canal Company	1886	Left	19S	21W	11	NW¼ SE¼	Meddle Canal	84.20	Tracts described below:				Hidalgo	Ownership data as below:		397.20		.84
								17.20	18S	21W	2	NW¼ SW¼	"	G. W. Johnson	102.00		.23	
								2.10	18S	21W	2	SW¼ SW¼	"	" "	12.60		.04	
								26.60	18S	21W	4	NE¼ SE¼	"	" "	177.00		.37	
								1.90	18S	21W	4	NW¼ SE¼	"	" "	7.20		.01	
Cooper & Windham Canal Company	1886	Right	19S	21W	11	NW¼ SE¼	Cooper & Windham Canal	11.90	18S	21W	6	Lot 3	Hidalgo	E. G. Davidson		71.40		.15
Shriver Ditch Company	1888	Left	19S	21W	10	NE¼ NE¼	Shriver Ditch	81.10	Tracts described below:				Hidalgo	Ownership data as below:		360.00		.75
								13.20	18S	21W	6	SW¼ NE¼	"	W. F. Shriver	72.00		.17	
								20.90	18S	21W	6	SE¼ NW¼	"	" "	132.00		.28	
								17.00	18S	21W	6	SW¼ NW¼	"	" "	107.00		.22	
								4.00	18S	21W	8	SE¼ NE¼	"	" "	48.00		.10	
T. H. B. Chapple	1887	Left	8S	14E	2	NE¼ NW¼	Pumping Plant	33.10	Tracts described below:				Pinal	Ownership data as below:		220.00		.44
								18.60	8S	14E	36	NW¼ SW¼ & SW¼ SW¼	"	T. H. B. Chapple	111.00		.23	
								11.70	8S	14E	2	NW NW¼	"	" "	71.00		.16	
								4.80	8S	14E	2	SW NE¼ & NE¼ SE¼	"	" "	72.00		.15	
Montezuma Canal Company	1887	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		24.00		.05

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in sq. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Tidwell Canal Company	1887	Right	7S	27E	5	SE¼ NW¼	Tidwell Canal	430.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		720.00		.25
Union Canal Company	1887	Left	7S	27E	28	SE¼ NW¼	Union Canal	5574.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		1962.00		4.09
Sunflower Canal Company	1887	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		80.00		.18
Graham Canal Company	1887	Right	7S	27E	9	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		480.00		1.00
Fort Thomas Consolidated Canal Company	1887	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2300.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		36.00		.08
Brown Canal Company	1887	Right	6S	26E	20	SE¼ SE¼	Brown Canal	626.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		720.00		1.31
Dodge-Nevada Canal Company	1887	Left	6S	24E	22	NE¼ NW¼	Dodge-Nevada Canal	1350.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		540.00		1.12
Smithville Canal Company	1887	Left	6S	23E	35	SW¼ NE¼	Smithville Canal	1792.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		432.00		.80
Curtis Canal Company	1887	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1680.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		720.00		1.50
Duncan Canal Company	1887	Left	5S	25E	28	NE¼ SW¼	Duncan Canal	10.20	Tracts described below:				Greenlee	Ownership data as below:		61.20		.13
								2.30	5S	25E	19	SW¼ NE¼	"	A. N. Livyn	13.80		.04	
								1.20	5S	25E	19	SW¼ NE¼	"	Ernest V. Ramsey & Eugene Ramsey	7.20		.02	
								5.80	5S	25E	19	SW¼ NE¼	"	" " " "	34.80		.07	
Nevada Consolidated Copper Company	1887	Right	5S	18E	14	SE¼ SW¼ SW¼ SE¼	Pumps		Use of water for Industrial, Municipal, domestic and				Gila	For further definition of this right see Article IX		360.00		.75
			4S	18E	34	NE¼ NW¼												
Cooper & Windham Canal Company	1887	Right	19S	21W	11	NW¼ SE¼	Cooper & Windham Canal	46.80	Tracts described below:				Hidalgo	Ownership data as below:		276.00		.58
								7.00	19S	21W	2	SE¼ NW¼	"	Peter Martinson	45.80		.09	
								11.00	19S	21W	2	SW¼ NW¼	"	J. R. Beavers	68.40		.15	
								5.00	19S	21W	3	SE¼ NW¼	"	O. Mortenson	33.00		.07	
								7.00	19S	21W	3	SW¼ NE¼	"	George H. Cooper, Jr. Administrator of the Estate of George Cooper, deceased	44.40		.09	
								12.00	19S	21W	3	NW¼ SE¼	"	" " " "	78.00		.17	
								3.80	19S	21W	4	SE¼ NE¼	"	J. R. Beavers	13.80		.03	
Montezuma Canal Company	1881	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		216.00		.45
San Jose Canal Company	1888	Left	6S	27E	34	SW¼ SW¼	San Jose Canal	8000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.25
Union Canal Company	1888	Left	7S	27E	18	SE¼ NW¼	Union Canal	5578.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		972.80		2.04

140

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location: Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description: Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands whose jurisdiction required herein	Diversion right: For irrigation season in cu.-ft. per sec.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Sundower Canal Company	1883	Left	7S	36E	9	NW¼ SE¼	Sundower Canal	400.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		30.00		.06
Graham Canal Company	1889	Right	7S	36E	6	NE¼ NW¼	Graham Canal	2377.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		343.00		.71
Fort Thomas Consolidated Canal Company	1880	Left	8S	36E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		90.00		.30
Brown Canal Company	1885	Right	6S	36E	30	SE¼ SE¼	Brown Canal	670.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		90.00		.30
Dodge-Nevada Canal Company	1888	Left	6S	36E	28	NE¼ NW¼	Dodge-Nevada Canal	1186.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		843.00		1.18
Smithville Canal Company	1888	Left	6S	36E	16	SW¼ NE¼	Smithville Canal	1700.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		780.00		1.08
Curtis Canal Company	1886	Right	6S	34E	17	NW¼ NW¼	Curtis Canal	1484.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		348.00		.49
Valley Canal Company	1882	Right	10S	31W	4	NE¼ NW¼	Valley Canal	617.20	Tracts described below:				Greenlee	Ownership data as below:		2803.00		5.51
								21.20	SE	31E	13	SE¼ NW¼	"	W. W. Willey	127.20		.25	
								4.00	SE	31E	24	SW¼ SE¼	"	" " "	24.00		.05	
								6.00	SE	31E	18	NE¼ NE¼	"	W. T. Sanders	36.00		.12	
								6.00	SE	31E	19	NW¼ SW¼	"	J. W. RD & C. P. RR	36.00		.10	
								1.00	SE	32E	17	NW¼ SW¼	"	T. W. Brown	1.00		.02	
								26.40	SE	32E	17	SW¼ SW¼	"	" " "	172.40		.34	
								6.00	SE	32E	17	SW¼ SW¼	"	J. W. RD & C. P. RR	36.00		.07	
								10.20	SE	32E	17	NE¼ SW¼	"	T. W. Brown	61.20		.16	
								2.00	SE	32E	16	NE¼ NW¼	"	William Meeks	12.00		.02	
								26.00	SE	32E	16	NW¼ NE¼	"	" " "	156.00		.32	
								17.40	SE	32E	16	SW¼ NE¼	"	" " "	104.40		.22	
								8.00	SE	32E	16	NE¼ NW¼	"	" " "	48.00		.10	
								17.00	SE	32E	16	NW¼ NW¼	"	Mrs. Elsie Alexander	102.00		.22	
								14.00	SE	32E	16	SW¼ NW¼	"	W. T. Sanders	37.00		.16	
								36.00	SE	32E	16	NE¼ SE¼	"	Andy Hurt & Brooks Smith	221.00		.46	
								24.00	SE	32E	16	SE¼ SE¼	"	" " " " "	201.00		.42	
								14.00	SE	32E	15	NW¼ NW¼	"	W. J. Wynn & T. A. Hynn	141.00		.29	
								46.00	SE	32E	15	SW¼ NW¼	"	" " " " "	276.00		.58	
								28.00	SE	32E	15	NW¼ SW¼	"	A. L. Stewart	336.00		.69	
								11.00	SE	32E	15	SW¼ SW¼	"	" " "	78.00		.16	
								23.00	SE	32E	15	SE¼ SW¼	"	Hanlon Land	184.00		.38	
								46.00	SE	32E	15	SW¼ SW¼	"	Julia Ramsey & Stewart Land	276.00		.58	
								6.00	SE	32E	15	SW¼ SW¼	"	" " " " "	36.00		.07	
Duncan Canal Company	1888	Left	6S	31E	36	NE¼ SW¼	Duncan Canal	13.00	Tracts described below:				Greenlee	Ownership data as below:		78.00		.17
								2.00	SE	32E	19	NW¼ NE¼	"	Duncan Union High School	1.00		.01	
								6.00	SE	32E	19	NE¼ NW¼	"	District, County of Greenlee	12.00		.12	
								1.00	SE	32E	19	SE¼ NW¼	"	State of Arizona				
								4.00	SE	32E	19	SE¼ NW¼	"	J. F. Gonsalves	22.00		.04	

141

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Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac. ft. Individual	Total	Maximum rate of diversion in cu. ft. per sec. Individual	Total
Black & McClusky Canal Company	1886	Left	8S	27E	19	NE¼ SE¼	Black & McClusky Canal	178.10	Tracts described below:				Graham	Ownership data as below:		1096.60		2.29
								17.60	8S	21E	18	SW¼ NE¼		W. W. Brooks	105.60		.22	
								8.10	8S	21E	18	SE¼ NE¼		" " "	48.60		.10	
								12.70	8S	21E	18	NE¼ SE¼		B. A. Wilson	76.20		.16	
								38.60	8S	21E	18	SE¼ SE¼		" " "	231.60		.44	
								6.80	8S	21E	19	NW¼ NE¼		" " "	40.80		.09	
								7.60	8S	21E	19	NW¼ SE¼		" " "	45.60		.10	
								11.30	8S	22E	13	NE¼ SW¼		W. W. Brooks	67.80		.14	
								3.40	8S	22E	18	NW¼ SW¼		B. A. Wilson	20.40		.04	
								20.80	8S	22E	18	NW¼ SW¼		" " "	124.80		.26	
								4.80	8S	22E	18	SW¼ SW¼		Floyd Hightower	28.80		.06	
								8.80	8S	22E	18	SW¼ SW¼		" " "	52.80		.12	
								37.60	8S	22E	18	SE¼ SW¼		B. A. Wilson	225.60		.47	
								.40	8S	22E	18	SW¼ SE¼		" " "	2.40		.01	
United States	1889	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence Casa Grande Canal	304.60	Tracts described below:				Pinal	Ownership data as below:	152.00	1238.00	.31	2.66
								33.00	6S	8E	11	NE¼ NE¼		Dugald Stewart	132.00		.28	
								70.60	6S	9E	19	W½ NW¼		Leon M. Newell	480.00		1.00	
								83.60	6S	8E	11	SE¼ SW¼		" " "	183.00		.37	
								20.80	10S	2E	6	NW¼		State of Arizona				
Montezuma Canal Company	1889	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3740.00	See Table No. 1 for detailed descriptions of these lands.				Graham	See Table No. 1 for Ownership data.		282.00		.75
San Jose Canal Company	1889	Left	6S	27E	30	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed descriptions of these lands.				Graham	See Table No. 2 for Ownership data.		300.00		.65
Union Canal Company	1889	Left	7S	27E	16	SE¼ NW¼	Union Canal	5375.00	See Table No. 4 for detailed descriptions of these lands				Graham	See Table No. 4 for Ownership data.		2220.00		5.15
Sunflower Canal Company	1889	Left	7S	28E	8	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands				Graham	See Table No. 5 for Ownership data.		60.00		.13
Graham Canal Company	1889	Right	7S	28E	8	NE¼ NW¼	Graham Canal	2577.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		774.00		1.71
Fort Thomas Consolidated Canal Company	1889	Left	6S	24E	6	NE¼ NW¼	Fort Thomas Consolidated Canal	2700.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		300.00		.65
Brown Canal Company	1889	Right	6S	22E	32	SE¼ SE¼	Brown Canal	530.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		80.00		.18
Dodge-Nevada Canal Company.	1889	Left	6S	22E	22	NE¼ NW¼	Dodge-Nevada Canal	1230.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		540.00		1.19
Curtis Canal Company	1889	Right	6S	24E	13	NW¼ NW¼	Curtis Canal	1670.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		668.00		1.35
Duncan Canal Company	1889	Left	6S	22E	32	NE¼ SW¼	Duncan Canal	17.00	Tracts described below:				Greenlee	Ownership data as below:	13.00	103.00	.04	.23
								3.00	6S	22E	18	NW¼ NE¼		(Ernesta Freeman, Administratrix of the Estate of (Frank Freeman, deceased.	24.00		.08	
								4.00	6S	23E	13	SW¼ NE¼			66.00		.13	
								16.00	6S	23E	18	NE¼ NW¼						

142

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Meddle Canal Company	1889	Left	10S	21E	11	NW¼ SE¼	Meddle Canal	80.00	Tracts described below:									
								24.20	22S	22E	28	SE¼ SW¼	Greenlee	Ownership data as below:				
								28.30	22S	22E	33	SW¼ SE¼	"	Silas Bradshaw	145.60	648.40		1.13
Nevada Consolidated Copper Company	1890	Right	6S	18E	14	SE¼ SW¼ SW¼ SE¼	Pumps	11.10	22S	22E	34	NW¼ NE¼	"	" "	37.20		.30	
									23S	22E	3	NE¼ NW¼	"	" "	169.60		.093	
United States	1890	Left	5S	18E	22	NE¼ NW¼								" "	192.60		.833	
			4S	11E	6	NW¼	Asbarez-Hayden Diversion Dam & Florence Canal Grande Canal		Use of water for industrial, municipal, domestic and related purposes.				Gila	For further definition of this right see Article IX		80.00		.13
								163.00	Tracts described below:									
								M.00	4S	10E	29	SE¼	Final	Ownership data as below:				
								2.00	3S	11E	1	SW¼ NE¼	"	James R. Trail	120.00	353.00		1.79
								85.00	3S	11E	2	SE¼ NE¼	"	Thad Moore	18.00		.38	
								83.00	3S	11E	35	E½ NE¼	"	Earl G. Clemens	460.00		.06	
													"	Mira B. Doran	360.00		1.00	
																	.62	
Montezuma Canal Company	1890	Left	7S	21E	17	NE¼ NE¼	Montezuma Canal	8760.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		350.00		.78
Union Canal Company	1890	Left	7S	22E	18	SE¼ NW¼	Union Canal	8275.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		3820.00		8.87
Sunflower Canal Company	1890	Left	7S	20E	9	NW¼ SE¼	Sunflower Canal	600.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		60.00		.13
Graham Canal Company	1890	Right	7S	21E	9	NE¼ NW¼	Graham Canal	2377.90	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		480.00		1.00
Brown Canal Company	1890	Right	6S	20E	30	SE¼ SE¼	Brown Canal	536.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		300.00		.62
Dodge-Nevada Canal Company	1890	Left	6S	21E	20	NE¼ NW¼	Dodge-Nevada Canal	1580.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		840.00		1.18
Smithville Canal Company	1890	Left	6S	21E	30	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		900.00		1.38
Curtis Canal Company	1890	Right	6S	24E	13	NW¼ NW¼	Curtis Canal	1090.00	See Table No. 11 for detailed description of these lands.				Graham	See Table No. 11 for Ownership data.		300.00		.62
United States	1891	Left	4S	11E	6	NW¼	Asbarez-Hayden Diversion Dam & Florence Canal Grande Canal	974.00	Tracts described below:									
								12.00	4S	10E	28	NE¼ NW¼	Final	Ownership data as below:				
								190.00	4S	10E	29	SE¼	"	Jennie Roberts	72.00	5844.00		12.17
								70.00	4S	10E	32	E½ NE¼	"	W. O. Kidder	960.00		.18	
								140.00	4S	10E	34	SE¼	"	J. R. Waldrop	420.00		2.00	
								80.00	4S	10E	35	W½ NW¼	"	A. N. Waldrop	960.00		.87	
								40.00	4S	10E	36	SE¼ NW¼	"	Grace R. Beeken	480.00		2.00	
								160.00	4S	11E	31	NE¼	" "		960.00		1.00	
													"	Grace R. Beeken, Albert G. Beeken & Clara L. Beeken	960.00		.86	
								20.00	4S	11E	19	SE¼ SE¼	"	Charles P. Emmett	180.00		2.00	
								10.00	4S	11E	29	NW¼ SE¼	"	Robert Denton	90.00		.87	
								40.00	4S	11E	30	SE¼ SE¼	"	Ralph M. Rounds	360.00		.87	
								80.00	4S	11E	31	E½ NE¼	"	Louise M. Trskal	480.00		1.00	
												NW¼ SW¼ & SW¼ NW ¼	"	Dee A. Trskal	480.00		1.00	
								40.00										
			6S	21E	32	SW¼ SW¼		6.00	6S	21E	34	Lot 1, Blk 28 Arizola Townsite.	"	Louise M. Trskal Addie Phillips	240.00 35.00		.50 .08	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & L.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands whose jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company	1891	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3788.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		380.00		.76
San Jose Canal Company	1891	Left	6S	27E	31	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		288.00		.61
Tidwell Canal Company	1891	Right	7S	27E	5	SE¼ NW¼	Tidwell Canal	488.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		80.00		.18
Union Canal Company	1891	Left	7S	27E	18	SE¼ NW¼	Union Canal	8278.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		1290.00		3.60
Sunflower Canal Company	1891	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	488.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		96.00		.13
Graham Canal Company	1891	Right	7S	26E	3	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		1415.00		3.94
Brown Canal Company	1891	Right	6S	28E	29	SE¼ SE¼	Brown Canal	878.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		901.00		1.88
Dodge-Nevada Canal Company.	1891	Left	6S	26E	90	NE¼ NW¼	Dodge-Nevada Canal	1340.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		300.00		.62
Fourmen Canal Company	1891	Left	7S	26E	1	NW¼ NE¼	Fourmen Canal	900.00	See Table No. 12 for detailed description of these lands.				Graham	See Table No. 12 for Ownership data.		1680.00		3.36
Cooper & Windham Extension Canal Company. Under Contract whereby Cooper & Windham Canal Company makes actual diversion	1891	Right	10S	21W	11	NW¼ SE¼	Cooper & Windham Canal & Cooper & Windham Extension Canal	20.00 L. 40 20.00 L. 80	Tracts described below:				Greenlee	Ownership data as below:				
									8S	22E	30	NW¼ NE¼	"	A. F. Legion	5.40	100.20	.08	.20
									7S	22E	30	SW¼ NE¼	"	" " "	101.20		.85	
									8S	23E	24	SW¼ NE¼	"	" " "	5.60		.07	
Duncan Canal Company	1891	Left	8S	23E	28	NE¼ SW¼	Duncan Canal	5.00 5.00 .20	Tracts described below:				Greenlee	Ownership data as below:		31.20		.06
									8S	23E	16	NE¼ NW¼	"	Roy D. Williams	30.00		.06	
									8S	23E	16	SE¼ NW¼	"	" " "	1.20		.01	
United States	1892	Left	6S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	400.00 160.00 40.00 80.00 80.00 80.00 80.00	Tracts described below:				Pinal	Ownership data as below:				
									5S	8E	24	SW¼	"	Robert H. Patterson	960.00	2400.00	2.00	5.00
									6S	8E	2	SW¼ NW¼	"	Orme R. Reeves	240.00		.50	
									6S	8E	26	NW¼ NW¼	"	Ed Levy & Hazel A. Converse	480.00		1.00	
									6S	8E	15	SW¼ NW¼; NW¼ SW¼	"	R. O. Richardson	120.00		.25	
									6S	8E	15	SE¼ NW¼; NE¼ SW¼	"	W. M. Fennemore	120.00		.25	
									6S	8E	19	W½ NW¼	"	Lillian C. Morehead	480.00		1.00	
Montezuma Canal Company	1892	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	9750.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		380.00		.76
Union Canal Company	1893	Left	7S	27E	18	SE¼ NW¼	Union Canal	8278.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		965.00		1.93
Sunflower Canal Company	1893	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	488.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		195.00		.39

144

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Graham Canal Company	1892	Right	7S	29E	9	NE¼ NW¼	Graham Canal	2677.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		982.00		2.00
Brown Canal Company	1892	Right	6S	25E	30	SE¼ SE¼	Brown Canal	820.00	See Tabel No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		270.00		.85
Dodge-Nevada Canal Company	1892	Left	6S	25E	20	NE¼ NW¼	Dodge-Nevada Canal	1258.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for Ownership data.		186.00		.59
Smithville Canal Company	1892	Left	6S	26E	34	SW¼ NE¼	Smithville Canal	1700.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		150.00		.81
Sunset Canal Company	1892	Right	18S	21W	11	NW¼ NW¼	Sunset Canal	96.50	Tracts described below:				Hidalgo	Ownership data as below:		578.00		1.20
								2.50	19S	20W	12	NW¼ NW¼	"	C. F. Houlihan	22.62		.82	
								4.55	19S	21W	12	NW¼ NW¼	"	E. T. Johns	38.83		.95	
								2.21	19S	20W	12	SW¼ NW¼	"	" " "	16.60		.36	
								3.50	19S	20W	12	SE¼ NW¼	"	" " "	47.03		.12	
								2.20	19S	20W	12	SW¼ NE¼	"	G. M. Brooks	14.20		.07	
								.50	19S	21W	11	NE¼ SE¼	"	Hiram K. Mortensen	1.50		.01	
								14.50	19S	21W	11	NE¼ SE¼	"	James A. Mitchell	86.85		.18	
								4.50	19S	21W	12	NW¼ SE¼	"	" " "	28.80		.83	
								5.50	19S	21W	11	SE¼ SE¼	"	" " "	21.00		.04	
								12.80	19S	21W	12	SW¼ SW¼	"	" " "	11.20		.27	
								4.10	19S	21W	12	SE¼ SW¼	"	" " "	24.60		.52	
								25.80	19S	21W	12	NE¼ NE¼	"	G. F. Houlihan	123.00		.28	
								6.00	19S	21W	12	NW¼ NE¼	"	" " "	38.00		.08	
United States	1888	Left	4S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence Casa Grande Canal	320.00	Tracts described below:				Final	Ownership data as below:		1865.00		4.07
								160.00	6S	9E	31	NW¼	"	Hazel H. Clemens	960.00		2.00	
								160.00	6S	9E	31	NW¼	"	George M. Broadway	960.00		2.00	
								6.00	6S	9E	36	Lot 2, Sec 19 Ariz. Twnship.	"	Addie Phillips	36.00		.07	
Montezuma Canal Company	1892	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	2760.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		480.00		1.00
San Jose Canal Company]	1892	Left	6S	27E	30	SW¼ SW¼	San Jose Canal	9001.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.39
Tidwell Canal Company	1892	Right	7S	27E	2	SE¼ NW¼	Tidwell Canal	440.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		60.00		.13
Union Canal Company	1892	Left	7S	27E	18	SE¼ NW¼	Union Canal	2674.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		150.00		.31
Graham Canal Company	1892	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2677.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		970.00		.88
Fort Thomas Consolidated Canal Company	1892	Left	6S	24E	6	NE¼ NW¼	Fort Thomas Consolidated Canal	2320.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		1200.00		2.63
Brown Canal Company	1892	Right	6S	24E	30	SE¼ SE¼	Brown Canal	820.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		430.00		.94

145

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Meddis Canal Company	1899	Left	16S	21W	11	NW¼ SE¼	Meddis Canal	78.40	Tracts described below:									
								28.00	16S	21W	2	S½ SW¼ SW¼	Hidalgo	Ownership data as below:		671.00		.98
								14.00	16S	21W	2	SE¼ SW¼	"	W. W. Johnson	156.00		.31	
								7.10	16S	21W	2	SW¼ SE¼	"	W. W. Lloyd	83.80		.16	
															61.60		.08	
								7.40	16S	21W	2	SE¼ SE¼	"		1.80		.01	
								11.20	16S	21W	4	NE¼ SE¼	"	O. W. Johnson	42.00		.07	
								2.10	16S	21W	4	NW¼ SE¼	"		73.80		.11	
								5.10	16S	21W	10	NE¼ NE¼	"	W. W. Lloyd	14.40		.02	
									16S	21W	10	NW¼ NE¼	"		48.60		.10	
United States	1894	Left	6S	11E	6	NW¼	Arkansas-Hayden Diversion Dam & Florence-Cañon Grande Canal	193.80	Tracts described below:									
								45.60	18	8E	31	SE¼ NW¼	Pinal	Ownership data as below:		1182.08		2.40
													"	Robert Dexter, Administrator of the Estate of George F. Gallagher, deceased.	912.00		.96	
								13.00	18	8E	32	E½ SE¼ NE¼	"	John MacGregor Goodale	72.00		.12	
								44.00	18	8E	32	SE¼ SE¼	"	John W. Norris	240.00		.48	
								14.00	18	8E	33	SW¼ SE¼ NE¼	"	James E. Dooley	96.00		.18	
								16.00	18	8E	34	SW¼ SW¼ SE¼ SW¼	"	Earl F. Bailey	96.00		.18	
								64.00	18	8E	35	NE¼ SE¼	"	George W. Burgess	96.00		.18	
									17	8E	2	N½ SW¼	"	Florence Fahnemoster and Howard C. Fahnemoster	240.00		.81	
Montezuma Canal Company	1894	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3750.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		240.00		.80
Tidwell Canal Company	1894	Right	7S	27E	5	SE¼ NW¼	Tidwell Canal	430.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		60.00		.13
Union Canal Company	1894	Left	7S	27E	18	SE¼ NW¼	Union Canal	3575.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for ownership data.		615.00		1.99
Graham Canal Company	1894	Right	7S	26E	6	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for ownership data.		135.00		.33
Smithville Canal Company	1894	Left	6S	26E	34	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		180.00		.31
Valley Canal Company	1894	Right	16S	21W	6	NE¼ NW¼	Valley Canal	78.80	Tracts described below:									
								1.20	16S	21W	7	SW¼ SW¼	Graham	Ownership data as below:		465.60		.99
								11.20	16S	21W	7	SE¼ SW¼	"	W. L. Hankins	81.20		.97	
								16.40	16S	21W	18	NE¼ NW¼	"		78.20		.14	
								16.40	16S	21W	18	NW¼ NW¼	"		114.60		.20	
								7.40	16S	21W	18	SW¼ NW¼	"		82.60		.14	
								50.80	16S	21W	18	SE¼ NW¼	"		44.80		.08	
															124.80		.22	
Meddis Canal Company	1894	Left	16S	21W	11	NW¼ SE¼	Meddis Canal	177.60	Tracts described below:									
								18.00	16S	21W	26	NE¼ SE¼	Graham	Ownership data as below:		1085.60		2.27
								28.00	16S	21W	26	NW¼ SE¼	"	L. O. Mayers	114.00		.20	
								47.20	16S	21W	26	SW¼ SE¼	"		146.80		.26	
								80.80	16S	21W	26	SE¼ SE¼	"		230.80		.41	
								16.00	16S	21W	35	NE¼ NE¼	"		321.60		.57	
								38.60	16S	21W	4	NW¼ NE¼	"		90.00		.16	
															221.60		.39	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season (2 sc. ft.): Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
United States	1886	Left	42	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal.	740.20	Tracts described below:				Final	Ownership data as below:		4441.80		9.25
								4.00	4S	9E	36	SW¼ NW¼	"	Elizabeth M. Martin	30.00		.06	
								31.20	4S	9E	36	W½ NW¼	"	Roland H. Moorehouse	311.74		.44	
								36.71	4S	9E	36	NW¼ NW¼	"	" " "	325.38		.63	
								10.38	4S	9E	36	NE¼ NW¼	"	" " "	81.74		.13	
								10.46	4S	9E	36	W½ SE¼ NW¼	"	" " "	63.84		.13	
								5.00	4S	9E	36	W½ SW¼ NW¼	"	Amelia V. Gateway	65.00		.13	
								80.00	10S	9E	36	W½ NW¼	"	Valley Bank & Trust Company	440.00		1.00	
								8.00	10S	9E	36	NW¼ SW¼	"	" " "	48.00		.10	
								.20	6S	8E	31	Lots 6, 7, 7 & 8						
												Blk 6, Florence Townsite.	"	W. W. Lane	3.12		.01	
								80.00	6S	8E	6	W½ NW¼	"	George W. Pattee	200.00		.45	
								80.00	6S	8E	24	E½ SE¼	"	E. D. Thornton	280.00		.74	
								80.00	6S	8E	25	W½ NE¼	"	Maude M. Bamler & Fred V. Bamler	480.00		1.00	
								80.00	6S	8E	36	E½ NW¼	"	Edwin Ralph	480.00		1.00	
								80.00	6S	8E	36	E½ SE¼	"	Dan T. Peart, Administrator of the Estate of Lois W. Lee, deceased, and Dan T. Peart, Administrator of the Estate of Thomas J. Sherrill, deceased.	280.00		.62	
								40.00	6S	8E	36	SE¼ SW¼	"	Katie E. Weaver	240.00		.52	
								70.00	7S	8E	31	E½ NE¼ NE¼	"	Peter D. Overpelt	220.00		.48	
								12.00	7S	8E	31	W½ NE¼ NE¼	"	" " "	60.00		.18	
								14.00	7S	8E	32	W½ SW¼ NW¼	"	Charles M. Schrub	80.00		.18	
								10.00	7S	8E	32	E½ SW¼ NW¼	"	" " "	65.00		.14	
								114.90	7S	8E	32	NW¼ NW¼, SW¼ NW¼, NW¼ SW¼, SW¼ SW¼	"	Valley Bank & Trust Company	575.00		1.25	
								7.00	7S	8E	31	E½ NW¼ NW¼	"	Helen S. Shaw	42.00		.09	
Montezuma Canal Company	1890	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	2760.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		340.00		.50
San Jose Canal Company	1896	Left	6S	27E	24	SW¼ SW¼	San Jose Canal	2000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		280.00		.40
Union Canal Company	1895	Left	7S	27E	18	SE¼ NE¼	Union Canal	8878.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		180.00		.31
Sunflower Canal Company	1898	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		120.00		.25
Graham Canal Company	1889	Right	7S	26E	6	NE¼ NW¼	Graham Canal	9977.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		1350.00		2.50
Fort Thomas Consolidated Canal Company	1899	Left	6S	21E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		210.00		.44
Calvin-Jones Canal Company	1898	Right	4S	23E	36	SW¼ SW¼	Calvin-Jones Canal	30.00	See Table No. 13 for detailed description of these lands.				Graham	See Table No. 13 for Ownership data.		180.00		.38

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands within jurisdiction acquired lands	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Valley Canal Company	1884	Right	19S	21W	6	NE¼ NW¼	Valley Canal	110.82	Tracts described below:								694.80	1.44
								7.23			20	NE¼ NW¼	Grenlee	Ownership data as below:				
								31.16			20	NE¼ SE¼	"	H. J. Nunn & T. A. Nunn	42.20		.08	
								21.82			20	NW¼ SW¼	"	" " " "				
								25.03			20	SE¼ SE¼	"	Calvet Kerlinger	186.08		.38	
								19.83			20	SW¼ SE¼	"	H. J. Nunn & T. A. Nunn	120.24		.24	
								5.34			20	SE¼ SE¼	"	Hamlet Lent	119.26		.24	
								7.32			21	NW¼ NE¼	"	Sarah L. Richardson	48.20		.11	
											21	NE¼ NE¼	"	Hamlet Lent	46.26		.09	
Cooper & Windham Extension Canal Company, Under contract whereby Cooper & Windham Canal Company makes actual diversion.	1895	Right	18S	21W	11	NW¼ SE¼	Cooper & Windham Canal & Cooper & Windham Extension Canal	133.62	Tracts described below:								801.00	1.66
								28.40			34	NE¼ SW¼	Grenlee	Ownership data as below:				
								11.40			34	NW¼ SW¼	"	Betty Marsh Chantham	74.00		.26	
								23.62			34	NE¼ SE¼	"	" " "	64.08		.14	
								9.10			34	NW¼ SE¼	"	John Hagan	213.82		.48	
								34.74			34	NW¼ SE¼	"	" "	64.40		.14	
								4.85			34	SW¼ SE¼	"	George A. Lyal	172.28		.38	
								2.85			34	SW¼ SE¼	"	" "	22.82		.05	
								17.26			34	SE¼ SE¼	"	John Hagan	14.62		.03	
															104.00		.22	
Middle Canal Company	1885	Left	18S	21W	11	NW¼ SE¼	Middle Canal	72.32	Tracts described below:								422.96	.91
								24.82			34	SW¼ NE¼	Grenlee	Ownership data as below:				
								6.72			34	SW¼ NW¼	"	V. Soto	127.02		.28	
								2.82			34	SE¼ NE¼	"	" "	23.26		.05	
								1.84			34	SW¼ NE¼	"	" "	20.56		.04	
								14.62			34	SW¼ NW¼	"	Nicholas Soares	7.82		.02	
								20.10			34	SE¼ NW¼	"	" "	62.62		.14	
															132.80		.28	
Bennet Canal Company	1885	Right	18S	20W	31	SW¼ NW¼	Bennet Canal	24.62	Tracts described below:								148.00	.33
								6.62			12	SW¼ NW¼	Bighigo	Ownership data as below:				
								2.82			12	NE¼ NW¼	"	J. E. Carlton	33.08		.08	
								6.82			12	NW¼ NW¼	"	" "	61.08		.13	
								4.82			12	SW¼ NW¼	"	M. L. Hayde	2.82		.01	
								4.10			12	SE¼ NW¼	"	" "	52.82		.11	
															18.82		.04	
Nevada Consolidated Copper Company	1898	Right	8S	18E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for Industrial, Municipal, Domestic and related purposes.				Gila	For further definition of this right see Article IX.		248.00		.50
			9S	18E	23	NE¼ NW¼												
United States	1898	Left	6S	11E	6	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	318.08	Tracts described below:								1380.00	2.88
								16.08			26	N½ N½ NW¼ NW¼	Pinal	Ownership data as below:				
								39.02			14	SE¼ SW¼	"	Archie L. Bartlett	83.08		.18	
								35.08			14	SW¼ SE¼	"	Frederick K. Kreinke	248.00		.52	
								24.08			14	SE¼ SE¼	"	Ed Drake	160.00		.33	
								8.08			24	N½ NE¼ & SE¼ NW¼	"	Gustav Kreinke	670.00		1.38	
								24.08			26	E½ NE¼ SW¼	"	Frederick Kuckuck	120.00		.25	
								23.08			26	SW¼ NE¼ NE¼	"	Nelle R. Goodenough	120.00		.25	
														Dan T. Peart, Administrator of the Estate of Lois W. Lee, deceased.	190.00		.39	
								81.00			26	E½ NE¼	"	Roland Curry & Elmore Curry	480.00		1.00	

148

Party entitled to divert from the stream	Date of priority	Point of diversion					Name of diverting and/or carrying structure	Lands for which right acquired					County	Parties owning said lands when jurisdiction acquired lands	Diversion right			
		Side of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.					Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.						For irrigation season in ac.-ft.		Maximum rate of diversion in cu. ft. per sec.	
			Twp.	Rge.	Sec.	Subdivision			Twp.	Rge.	Sec.	Subdivision			Individual	Total	Individual	Total
Montezuma Canal Company	1896	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	8780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		540.00		1.13
San Jose Canal Company	1896	Left	6S	27E	32	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		600.00		1.25
Tidwell Canal Company	1895	Right	7S	27E	3	SE¼ NW¼	Tidwell Canal	460.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		180.00		.38
Union Canal Company	1896	Left	7S	27E	18	SE¼ NW¼	Union Canal	3678.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for Ownership data.		760.00		1.58
Sunflower Canal Company	1896	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for Ownership data.		80.00		.00
Graham Canal Company	1896	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2677.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		540.00		1.13
Fort Thomas Consolidated Canal Company	1896	Left	6S	24E	[illegible]	NE¼ NW¼	Fort Thomas Consolidated Canal.	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		1764.00		3.68
Brown Canal Company	1896	Right	6S	25E	30	SE¼ SE¼	Brown Canal	620.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for Ownership data.		600.00		1.25
Smithville Canal Company	1896	Left	6S	25E	25	SW¼ NE¼	Smithville Canal	1700.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		180.0		.38
Black & McCluskey Canal Company	1896	Left	6S	23E	19	NE¼ SE¼	Black & McCluskey Canal	99.70	Tracts described below:				Greenlee	Ownership data as below:		178.20		.38
								16.40	6S	23E	19	NW¼ NE¼	"	Ernesto Fragoso, Administratrix of the Estate of Frank Fragoso, deceased	98.40		.21	
								4.40	6S	23E	19	NW¼ NE¼	"		30.40		.06	
								.90	6S	23E	19	SW¼ NE¼	"		5.40		.01	
								8.00	6S	23E	19	NE¼ NW¼	"		48.00		.10	
Moodie Canal Company	1896	Left	19S	21W	11	NW¼ SE¼	Moodie Canal	172.80	Tracts described below:				Greenlee	Ownership data as below:		1036.80		2.16
								7.20	22S	22E	7W	SW¼ NE¼	"	Mrs. M. E. Pittman	43.20		.09	
								8.40	22S	22E	7W	NW¼ SE¼	"	" " "	50.40		.10	
								11.70	22S	22E	12W	NE¼ SW¼	"		70.20		.14	
								22.80	22S	23E	2	NE¼ NE¼	"	L. D. Stevens	136.80		.28	
								34.00	22S	23E	3	NW¼ NE¼	"	Joseph C. Elsinger	204.00		.42	
								37.40	22S	23E	3	NE¼ NW¼	"	" " "	224.40		.46	
								26.10	22S	23E	3	NW¼ NW¼	"	" " "	156.60		.32	
								31.40	19S	21W	1	SE¼ SW¼	Hidalgo	W. W. Lloyd	188.40		.39	
Sunset Canal Company	1896	Right	18S	20W	31	SW¼ NW¼	Sunset Canal	94.10	Tracts described below:				Hidalgo	Ownership data as below:		804.60		1.67
								18.20	18S	21W	2	SW¼ SE¼	"	Junius E. Payne	118.20		.24	
								4.70	18S	21W	2	SE¼ SE¼	"	" " "	28.20		.06	
								2.10	18S	21W	2	NE¼ SW¼	"	Mary Jane Jones	12.60		.03	
								9.00	18S	21W	2	SE¼ SW¼	"	T. V. Jones	54.00		.11	
								23.80	18S	21W	2	NW¼ SW¼	"	M. B. Zobele	139.80		.29	
								3.40	18S	21W	2	NW¼ SW¼	"	Bryan Zobele	20.40		.04	
								2.80	18S	21W	2	SW¼ SW¼	"	" " "	16.80		.03	
								3.40	18S	21W	2	NE¼ SW¼	"	P. W. Jones	20.40		.04	
								1.80	18S	21W	2	NW¼ NW¼	"	" " "	10.80		.02	
								1.20	18S	21W	2	SW¼ NW¼	"	Henry L. Smith	7.20		.01	
								6.10	18S	21W	2	SW¼ SW¼	"	" " "	36.60		.08	
								4.40	18S	21W	2	SE¼ NE¼	"	" " "	26.40		.05	
								1.20	18S	21W	2	NE¼ SE¼ (continued)	"	" " "	7.20		.02	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
(Continuation of Sunset Canal Company)	1896								(Continuation)									
								7.80	19S	21W	2	Lot 4	Hidalgo	H. M. Payne	48.80		.10	
								4.00	19S	21W	11	NE¼ NE¼	"	Junius K. Payne	23.60		.06	
								.46	19S	21W	11	NW¼ NE¼	"	F. W. Jones	2.40		.01	
Montezuma Canal Company	1897	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	2750.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		600.00		1.25
San Jose Canal Company	1897	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	3800.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for Ownership data.		60.00		.13
Sunflower Canal Company	1897	Left	7S	26E	9	NW¼ NE¼	Sunflower Canal	400.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for Ownership data.		20.00		.08
Graham Canal Company	1897	Both	7S	26E	9	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		300.00		.63
Fort Thomas Consolidated Canal Company	1897	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		605.00		1.20
Smithville Canal Company	1897	Left	6S	24E	8A	SW¼ NE¼	Smithville Canal	1780.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for Ownership data.		130.00		.25
Colmenero Canal Company	1897	Right	8S	21E	11	NW¼ SE¼	Colmenero Canal	74.30	Tracts described below:				Cromlee	Ownership data as below:		445.80		.94
								2.30	7S	21E	23	SE¼ NE¼	"	W. A. Gill	12.80		.02	
								6.20	7S	21E	23	SE¼ NE¼	"	J. B. Fullerton	37.20		.08	
								28.10	7S	21E	25	NE¼ SE¼	"	" " "	168.60		.38	
								14.00	7S	21E	25	SE¼ SE¼	"	" " "	84.00		.18	
								.80	7S	21E	34	NW¼ NW¼	"	W. A. Gill	4.60		.01	
								18.20	7S	21E	34	SW¼ NW¼	"	" " "	111.00		.22	
								.20	7S	21E	34	SW¼ NW¼	"	J. B. Fullerton	1.20		.01	
								.50	7S	21E	34	NW¼ SW¼	"	" " "	2.40		.01	
								.90	7S	21E	34	SW¼ SW¼	"	" " "	2.40		.01	
								2.70	8S	21E	3	NW¼ NW¼	"	Charles Tellez	15.80		.04	
Valley Canal Company	1897	Right	19S	21W	4	NE¼ NW¼	Valley Canal	831.30	Tracts described below:				Cromlee	Ownership data as below:		1987.00		4.15
								.30	18S	22E	19	NE¼ NE¼	"	Joe Whitridge	4.20		.01	
								7.00	18S	22E	19	NE¼ NE¼	"	" "	46.60		.12	
								15.20	18S	22E	20	SE¼ NW¼	"	Julius Ramsey & Edward Lapt	78.20		.18	
								28.20	18S	22E	20	NE¼ SW¼	"	" " " " "	181.20		.32	
								1.70	18S	22E	20	SE¼ SW¼	"	" " " " "	10.20		.03	
								32.70	18S	22E	20	NW¼ SE¼	"	" " " " "	178.20		.37	
								36.80	18S	22E	20	SW¼ SE¼	"	" " " " "	212.00		.44	
								23.40	18S	22E	27	SW¼ SW¼	"	" " " " "	172.60		.37	
								25.70	18S	22E	27	SE¼ SW¼	"	" " " " "	134.20		.28	
								37.80	18S	22E	29	NE¼ NE¼	"	" " " " "	227.40		.47	
								4.70	18S	22E	29	NW¼ NE¼	"	" " " " "	24.20		.13	
								8.90	18S	22E	29	SE¼ NE¼	"	" " " " "	53.40		.12	
								2.20	18S	22E	34	SW¼ NE¼	"	" " " " "	12.80		.04	
								42.70	18S	22E	34	NE¼ NE¼	"	" " " " "	256.20		.83	
								27.10	18S	22E	34	SW¼ NW¼	"	" " " " "	162.60		.33	
								38.80	18S	22E	34	SE¼ NW¼	"	" " " " "	231.40		.46	

150

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Meddis Canal Company	1897	Left	19S	21W	11	NW¼ SE¼	Meddis Canal	718.00	Tracts described below:				Grant	Ownership data as below:		4268.36		5.96
								24.00	19S	21W	11	NE¼ SW¼	"	W. F. Meyers	185.46		.37	
								8.00	19S	21W	12	NW¼ NW¼	"	Mrs. E. S. Stewart	8.40		.01	
								6.00	19S	21W	12	NW¼ SW¼	"	" " "	38.60		.08	
								37.00	19S	21W	12	SW¼ SW¼	"	" " "	224.60		.47	
								34.70	19S	21W	23	SE¼ SW¼	"	W. F. Meyers	214.20		.45	
								4.80	19S	21W	24	NW¼ SW¼	"	T. J. Anderson	37.60		.06	
								21.00	19S	21W	25	SW¼ SW¼	"	" " "	185.00		.40	
								26.00	19S	21W	26	SW¼ SW¼	"	" " "	186.00		.32	
								15.00	19S	21W	1	SW¼ NE¼	"	W. T. Cain	70.00		.15	
								17.20	19S	21W	1	SW¼ NE¼	"	T. W. Arnett	107.00		.22	
								14.20	19S	21W	1	SE¼ NE¼	"	" " "	97.20		.20	
								18.10	19S	21W	2	SW¼ NW¼	"	L. T. Christensen	114.00		.24	
								18.00	19S	21W	2	SW¼ NW¼	"	J. F. McGrath	111.00		.23	
								36.00	19S	21W	2	NE¼ NW¼	"	W. T. Cain	225.00		.46	
								1.20	19S	21W	2	NW¼ SW¼	"	" " "	7.20		.02	
								37.80	19S	21W	4	NE¼ NE¼	"	Alvin Weaver	224.80		.47	
								38.40	19S	21W	4	NW¼ NE¼	"	O. O. O'Dell	227.00		.48	
								38.40	19S	21W	4	SW¼ NE¼	"	E. E. Elledge	224.40		.48	
								22.00	19S	21W	4	SE¼ NE¼	"	Jesse B. Simms	231.60		.48	
								22.00	19S	21W	4	NE¼ NW¼	"	" " "	229.20		.48	
								38.20	19S	21W	4	NW¼ NW¼	"		53.40		.11	
								8.00	19S	21W	4	SW¼ NW¼	"	R. J. McLaren	98.60		.21	
								18.10	19S	21W	4	SW¼ NW¼	"	M. A. Cloum	121.80		.25	
								20.20	19S	21W	4	SE¼ NW¼	"	George W. Wyatt	121.80		.25	
								20.10	19S	21W	4	SE¼ NW¼	"	Aubra Gilliland	121.80		.25	
								4.80	19S	21W	4	NE¼ SE¼	"	Dolores B. Sabik	27.00		.06	
								20.20	19S	21W	4	NW¼ SE¼	"	" " "	131.20		.28	
								14.00	19S	21W	5	SW¼ NW¼	Hidalgo	W. O. Packer	87.00		.18	
								13.60	19S	21W	5	Lot 4	"	" " "	77.40		.16	
								3.70	19S	21W	5	Lot 3	"	Otto Cain	23.10		.05	
								6.00	19S	21W	5	SW¼ NE¼	"	" " "	30.00		.06	
								8.00	19S	21W	9	SW¼ NE¼	"	School District #7, County of Hidalgo, State of New Mexico.	53.00		.07	
								14.00	19S	21W	8	SW¼ NW¼	"	E. O. Barker	84.00		.18	
								28.30	19S	21W	6	Lot 8	"	T. S. Merrill	199.20		.42	
								11.70	19S	21W	5	SE¼ NW¼	"	" " "	66.80		.14	
								8.00	19S	21W	6	Lot 2	"	M. E. Stewart	48.00		.10	
								16.70	19S	21W	6	Lot 3	"	J. L. Crabtree	100.20		.21	
								2.00	19S	21W	6	Lot 3	"	" " "	12.00		.03	
								8.74	19S	21W	6	Lot 2	"	R. A. Merrill	49.44		.10	
								7.47	19S	21W	6	Lot 2	"	" " "	44.82		.09	
Sunset Canal Company	1897	Right	19S	20W	21	SW¼ NW¼	Sunset Canal	1.70	19S	21W	36	NW¼ SW¼	"	John B. Jones		10.20		.02
United States	1898	Left	4S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	38.77	Tracts described below:				Pinal	Ownership data as below:		229.82		.45
								20.00	4S	9E	36	SE¼	"	State of Arizona	120.00		.25	
								4.31	5S	9E	1	NE¼ NE¼ NW¼	"	Ernest W. McFarland	25.86		.05	
								10.00	4S	9E	35	SW¼ SW¼ NE¼	"	Nath Parks	60.00		.12	
								4.01	5S	9E	1	NE¼ NE¼ NW¼	"	C. H. Southworth	24.06		.05	
Montezuma Canal Company	1898	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for Ownership data.		480.00		1.00

151

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation ozners in cu. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Graham Canal Company	1898	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2477.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for Ownership data.		372.00		.75
Fort Thomas Consolidated Canal Company	1898	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2260.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for Ownership data.		980.00		1.97
Valley Canal Company	1898	Right	10S	21W	4	NE¼ NW¼	Valley Canal	74.20	Tracts described below:				Greenlee	Ownership data as below:		444.66		.93
								1.80	5S	21E	18	SW¼ SE¼	"	Robert M. Montgomery	11.45		.08	
								22.20	6S	21E	13	NW¼ NE¼	"	"	192.85		.40	
								11.70	6S	22E	18	SW¼ NE¼	"	Valley Bank & Trust Co.	70.20		.15	
								12.80	6S	22E	18	SE¼ NE¼	"	"	76.80		.17	
								14.90	6S	22E	18	SE¼ NW¼	"	"	89.40		.19	
Moddie Canal Company	1898	Left	10S	21W	11	NW¼ SE¼	Moddie Canal	488.60	Tracts described below:				Greenlee	Ownership data as below:		2,901.80		6.05
								13.80	5S	23E	29	NE¼ SW¼	"	F. M. Crockett	82.80		.17	
								2.80	6S	22E	29	NW¼ SW¼	"	Nellie R. Hoch	16.80		.04	
								21.80	6S	22E	29	SW¼ SW¼	"	F. M. Crockett	126.80		.26	
								5.10	6S	22E	31	NE¼ NE¼	"	J. D. Wilkins	34.00		.08	
								19.60	6S	22E	31	SE¼ NE¼	"	"	114.80		.24	
								1.80	6S	22E	32	NW¼ NW¼	"	D. R. Wilkins	10.80		.02	
								8.40	6S	22E	32	SW¼ NW¼	"	G. W. Quinn	58.40		.12	
								19.70	6S	22E	32	NE¼ NW¼	"	D. R. Wilkins	114.80		.24	
								3.45	6S	22E	32	NW¼ NW¼	"	J. D. Wilkins	20.45		.04	
								21.60	6S	22E	32	NW¼ NW¼	"	"	125.80		.26	
								1.10	6S	22E	32	NW¼ NW¼	"	D. R. Wilkins	6.40		.01	
								4.00	6S	22E	32	SW¼ NW¼	"	J. D. Wilkins	24.00		.05	
								16.00	6S	22E	32	SW¼ NW¼	"	C. C. Passmore	96.00		.20	
								21.40	6S	22E	32	SE¼ NW¼	"	D. R. Wilkins	124.80		.26	
								23.60	6S	22E	32	SE¼ SW¼	"	J. R. Robbs	141.60		.29	
								14.20	6S	22E	33	NW¼ SW¼	"	C. C. Passmore	85.20		.18	
								2.00	6S	22E	33	SW¼ SW¼	"	"	12.00		.02	
								5.70	6S	22E	33	SW¼ NW¼	"	David F. Campbell, Jr.	34.20		.07	
								14.70	6S	22E	33	NW¼ SW¼	"	"	88.20		.18	
								22.10	6S	22E	33	SE¼ SW¼	"	George W. Stinson	132.60		.27	
								34.20	6S	22E	33	NE¼ SE¼	"	G. W. Quinn	204.80		.42	
								4.80	6S	22E	33	SE¼ SE¼	"	E. J. Wilkins	28.80		.06	
								40.00	6S	22E	34	SW¼ SE¼	"	"	240.00		.49	
								7.40	6S	22E	34	NW¼ SE¼	"	G. W. Quinn	44.40		.09	
								10.10	6S	22E	34	SW¼ SE¼	"	George W. Stinson	60.60		.12	
								16.20	6S	22E	34	SW¼ SE¼	"	Mrs. E. A. Cole	97.20		.20	
								16.30	6S	22E	34	SW¼ SE¼	"	J. R. Cole	97.80		.20	
								10.30	6S	22E	34	SE¼ SE¼	"	Mrs. E. A. Cole	61.80		.13	
								9.90	6S	22E	34	SE¼ SE¼	"	G. W. Quinn	59.40		.12	
								24.70	6S	22E	35	SW¼ NW¼	"	R. B. Miller	148.20		.31	
								1.20	6S	22E	35	SE¼ NE¼	"	"	7.20		.02	
								11.40	6S	22E	6	NE¼ NE¼	"	W. T. Mosby	68.40		.14	
								4.80	6S	22E	6	NW¼ NE¼	"	"	28.80		.06	
								4.10	10S	21W	31	SE¼ SW¼	Hidalgo	W. W. Lloyd	24.60		.04	
								18.10	10S	21W	31	SW¼ SE¼	"	"	74.80		.16	

152

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. & M. or H. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. & M. or H. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Cooper & Windham Canal Company	1893	Right	19S	21W	11	NW¼ SE¼	Cooper & Windham Canal	320.70 39.80 34.80	Tracts described below: 19S 21W 31 Lot 4 19S 21W 31 Lot 3				Hidalgo "	Ownership data as below: Owen Lunt Randall Lunt, Administrator of the Estate of Jasper Cain, deceased.	138.00	1340.20	.98	2.92
															913.07		.64	
								23.10	19S 21W 31 Lot 4				"	R. J. Cain	125.88		.87	
								12.62	19S 21W 31 Lot 1				"	" " "	74.85		.18	
								11.80	19S 21W 32 SW¼ SE¼				"	Vinnage R. Bedford	69.58		.16	
								34.00	19S 21W 32 NW¼ SW¼				"	Peter Weidlen	144.00		.32	
								1.85	19S 21W 33 SE¼ NE¼				"	A. O. Grunell	10.56		.02	
								13.20	19S 21W 33 SW¼ SW¼				"	O. Lynn Hatch	72.60		.16	
								16.72	19S 21W 33 NE¼ SW¼				"	F. W. Erwin	92.00		.20	
								17.20	19S 21W 33 NW¼ SW¼				"	R. H. Tinsley	106.64		.24	
								13.70	19S 21W 33 SW¼ SE¼				"	R. H. Lord	75.35		.17	
								14.63	19S 21W 34 SW¼ SW¼				"	O. V. Lunt	80.46		.18	
								36.10	19S 21W 34 SE¼ SW¼				"	R. G. Davidson	130.00		.29	
								.05	19S 21W 35 NW¼ NW¼				"	Owen A. Merrill	.28		.01	
								.70	19S 21W 35 SW¼ NW¼				"	M. C. Grunell	.40		.01	
								11.40	19S 21W 6 Lot 1				"	W. R. Beavers	60.00		.13	
								1.80	19S 21W 6 SE¼ NE¼				"	" " "	9.00		.02	
								1.80	19S 21W 6 Lot 1				"	Owen Lunt	9.00		.02	
Sunset Canal Company	1908	Right	19S	20W	31	SW¼ NW¼	Sunset Canal	43.00 16.00 2.00 10.70 2.70	Tracts described below: 19S 21W 25 SE¼ SE¼ 19S 21W 36 SE¼ NE¼ 19S 21W 1 SE¼ NE¼ " " " " " " 19S 21W 1 NE¼ NE¼				Hidalgo " " " "	Ownership data as below: Mrs. T. M. Williamson W. F. Foster " " " " " "	93.40 14.40 112.20 22.20	242.20	.51 .07 .58	.51
United States	1880	Left	4S	11E	6	NW¼	Antzuet-Hayden Diversion Dam & Pierce - Cass Ditch Canal.	5.00	4S	10E	36	NW¼ SW¼	Final	United Bank & Trust Company		30.00		.07
Morteruma Canal Company	1899	Left	19S	27E	17	NE¼ NE¼	Morteruma Canal	3780.00	See Table No. 1 for detailed descriptions of these lands.				Graham	See Table No. 1 for ownership data.		1140.00		2.00
San Jose Canal Company	1900	Left	6S	27E	20	SW¼ SW¼	San Jose Canal	3500.00	See Table No. 2 for detailed descriptions of these lands.				Graham	See Table No. 2 for ownership data.		940.00		.00
Tilwell Canal Company	1900	Right	7S	27E	2	SE¼ NW¼	Tilwell Canal	440.00	See Table No. 3 for detailed descriptions of these lands.				Graham	See Table No. 3 for ownership data.		880.00		.63
Union Canal Company	1900	Left	7S	27E	18	SE¼ NW¼	Union Canal	3275.00	See Table No. 4 for detailed descriptions of these lands.				Graham	See Table No. 4 for ownership data.		150.00		.31
Sunflower Canal Company	1900	Left	7S	26E	8	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed descriptions of these lands.				Graham	See Table No. 5 for ownership data.		90.00		.13
Graham Canal Company	1900	Right	7S	26E	9	NE¼ NW¼	Graham Canal	3877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for ownership data.		450.00		.00
Fort Thomas Consolidated Canal Company	1900	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2300.00	See Table No. 7 for detailed descriptions of these lands.				Graham	See Table No. 7 for ownership data.		1300.00		2.00

153

Party entitled to divert from the stream	Date of priority	Point of diversion: Stream	Point of diversion: Location Referred to G. & S. R. & M. or N. M. R. & M. Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. & M. or N. M. R. & M. Twp.	Rge.	Sec.	Subdivision	County	Portion owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in sec.-ft. Individual	Total	Maximum rate of diversion in cu. ft. per sec. Individual	Total
Montezuma Canal Company	1900	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		1760.00		8.69
San Jose Canal Company	1900	Left	6S	27E	8	SW¼ SW¼	San Jose Canal	3280.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for ownership data.		600.00		1.28
Graham Canal Company	1900	Right	7S	26E	6	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for ownership data.		254.00		.74
Fort Thomas Consolidated Canal Company	1900	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2280.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for ownership data.		1680.00		3.78
Smithville Canal Company	1900	Left	6S	26E	8	SW¼ NE¼	Smithville Canal	1760.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for ownership data.		300.00		.69
Calvin-Jones Canal Company	1900	Right	4S	25E	36	SW¼ SW¼	Calvin-Jones Canal	80.00	See Table No. 12 for detailed description of these lands.				Graham	See Table No. 12 for ownership data.		34.00		.08
Billingsley-Extension Canal Company	1900	Right	2S	21E	16	NE¼ NW¼	Billingsley-Extension Canal	63.80	Tracts described below:				Greenlee	Ownership data as below:		303.80		.70
								31.20	7S	21E	34	NE¼ NE¼	"	E. F. Billingsley	187.20		.32	
								20.40	7S	21E	35	NW¼ NW¼	"	"	140.40		.32	
								6.20	7S	21E	2	SW¼ NE¼	"	"	34.20		.11	
Cooper & Windham Extension Canal Company. Under contract whereby Cooper & Windham Ditch makes actual diversions	1900	Right	16S	21W	11	NW¼ SE¼	Cooper & Windham Ditch & Cooper & Windham Extension Canal.	2.00	8S	21E	36	NE¼ SE¼	Greenlee	E. F. Billingsley		98.40		.00
Colmenero Canal Company	1900	Right	6S	21E	11	NW¼ SE¼	Colmenero Canal	11.80	Tracts described below:				Greenlee	Ownership data as below:		93.00		.15
								7.80	7S	21E	34	NE¼ NW¼	"	Waldo Harris	48.00		.08	
								4.20	7S	21E	34	NW¼ NW¼	"	" "	24.00		.04	
								.20	7S	21E	34	SW¼ NW¼	"	" "	1.20		.01	
								.40	7S	21E	34	SE¼ NW¼	"	" "	2.40		.01	
Valley Canal Company	1900	Right	15S	21W	6	NE¼ NW¼	Valley Canal	82.20	Tracts described below:				Greenlee	Ownership data as below:		210.60		.44
								2.40	8S	21E	31	NE¼ SW¼	"	Valley Bank & Trust Company	14.40		.02	
								19.80	8S	21E	31	NW¼ SE¼	"	" "	117.00		.24	
								7.20	8S	21E	31	SW¼ SE¼	"	" "	43.20		.09	
								6.00	8S	21E	36	NW¼ NW¼	"	Susan Spann, Administratrix of the estate of J. H. Spann, deceased	36.00		.08	
Meddle Canal Company	1900	Right	16S	21W	11	NW¼ SE¼	Meddle Canal	93.40	Tracts described below:				Greenlee	Ownership data as below:		286.40		1.11
								6.20	8S	21E	26	SW¼ NW¼	"	H. A. Porter and W. F. Porter, and J. H. Morton, Executor of the Estate of Alice E. Day, deceased.	44.20		.10	
								6.60	8S	21E	26	NE¼ SW¼	"		41.40		.07	
								5.20	8S	21E	26	NW¼ SW¼	"		46.20		.09	

(continued)

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands whose jurisdiction acquired herein	Diversion right: For irrigation season in acft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Noddle Canal Company (continuation)	1900											(Continuation)						
								17.50	19S	21W	26	NE¼ SW¼	Grant	J. L. Ajer	106.50		0.25	
								4.50	19S	21W	26	SE¼ SW¼	"	" " "	28.70		.06	
								12.70	19S	21W	26	SE¼ SE¼	"	W. H. Elledge	78.20		.16	
								7.80	19S	21W	35	NE¼ NE¼	"	" " "	48.00		.10	
								26.40	19S	21W	27	NW¼ NE¼	"	James Opie	161.80		.32	
Sunset Canal Company	1900	Right	19S	20W	31	SW¼ NW¼	Sunset Canal	244.80	Tracts described below:				Hidalgo	Ownership data as below:		1468.80		3.06
								L. 18	Virden Townsite			Blk 1 Lot 2	"	Thompson	6.00		.01	
								L. 19	"	"	"	" 1 " 3	"	Randall Lunt, Administrator of the Estate of Jasper Cole, deceased	6.00		.01	
								L. 18	"	"	"	" 2 " 1	"	Delbert Johnson	6.00		.01	
								L. 19	"	"	"	" 2 " 2	"	Percy P. Jones	6.00		.01	
								L. 18	"	"	"	" 2 " 3	"	Ralph Richardson	6.00		.01	
								L. 19	"	"	"	" 2 " 4	"	John B. Jones	6.00		.01	
								L. 19	"	"	"	" 3 " 1	"	O. O. Payne	6.00		.01	
								2.50	"	"	"	" 3 " 2, 3	"	H. M. Payne	13.30		.04	
								L. 19	"	"	"	" 4 " 1	"	J. E. Payne, Trustee of the Church of Jesus Christ of Latter Day Saints	6.00		.01	
								L. 19	"	"	"	" 4 " 2	"	Orson A. Merrill	6.00		.01	
								L. 19	"	"	"	" 4 " 3	"	Maude Larson	6.00		.01	
								L. 19	"	"	"	" 4 " 4	"	Helen A. Payne	6.00		.01	
								L. 19	"	"	"	" 5 " 1	"	Willard R. Jones	6.00		.01	
								L. 19	"	"	"	" 5 " 2	"	Rachel Jensen	6.00		.01	
								L. 19	"	"	"	" 5 " 3	"	Anna M. Lent	6.00		.01	
								L. 19	"	"	"	" 5 " 4	"	Mary Jane Jones	6.00		.01	
								2.20	"	"	"	" 6 " 1, 6	"	B. V. Whipple	13.20		.04	
								L. 19	"	"	"	" 6 " 2	"	J. Alfred Mortensen	6.00		.01	
								L. 19	"	"	"	" 6 " 3	"	M. L. Harris	6.00		.01	
								.60	"	"	"	" 7 " 1	"	B. V. Whipple	3.00		.01	
								L. 19	"	"	"	" 7 " 2	"	H. Bishops	6.00		.01	
								L. 19	"	"	"	" 7 " 3	"	Edward Lunt	6.00		.01	
								.60	"	"	"	" 7 " 4 W½	"	W. E. Bowers & E.W. Bishops	3.00		.01	
								.60	"	"	"	" 7 " 4 E½	"	A. E. Keller	3.00		.01	
								L. 19	"	"	"	" 8 " 1	"	T. V. Jones	6.00		.01	
								L. 19	"	"	"	" 8 " 2	"	Nancy A. Smith	6.00		.01	
								L. 19	"	"	"	" 8 " 3	"	Milton N. Jensen	6.00		.01	
								L. 19	"	"	"	" 9 " 1	"	Henry L. Smith	6.00		.01	
								L. 19	"	"	"	" 9 " 2	"	M. N. Jensen	6.00		.01	
								L. 19	"	"	"	" 9 " 3	"	M. D. Patten	6.00		.01	
								L. 19	"	"	"	" 9 " 4	"	Mitchell MacDonald	6.00		.01	
								L. 19	"	"	"	" 9 " 5	"	E. A. Brown	6.00		.01	
								10.20	19S	21W	22	SW¼ SE¼	"	Junius E. Payne	61.20		.13	
								28.40	19S	21W	23	SE¼ SE¼	"	" " "	180.80		.64	
								12.90	19S	21W	24	NE¼ SW¼	"	Mary Jane Jones	77.40		.17	
								12.90	19S	21W	24	SW¼ NW¼	"	Florentine Hilaba	83.40		.18	
								2.20	19S	21W	24	NW¼ SW¼	"	" " "	13.20		.02	
								12.30	19S	21W	24	NE¼ SW¼	"	F. W. Jones	73.80		.17	
								23.70	19S	21W	24	NW¼ NW¼	"	" " "	100.20		.22	
								3.40	19S	21W	2	Lot 2	"	School District No. 2, Hidalgo County, State of New Mexico	14.40		.03	
								2.70	19S	21W	3	Lot 2	"	George H. Cooper, Jr. Administrator of the Estate of George Cooper, deceased	16.20		.03	
								12.40	19S	21W	3	Lot 4	"	E. M. Payne	83.40		.17	
												(Continued)						

155

Party entitled to divert from the stream	Date of priority	Point of diversion: Bks of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Sunset Canal Company (continuation)	1900											(Continuation)						
								2.70	16S	21W	11	NE¼ NE¼						
								2.00	16S	21W	11	NE¼ NE¼						
								5.80	16S	21W	11	NE¼ NE¼						
								5.10	16S	21W	12	NW¼ NW¼		Ralph Richardson	22.70		.08	
								.20	16S	21W	12	NW¼ NW¼		Peter F. Jones	18.00		.04	
								7.20	16S	21W	12	SW¼ NW¼		Hans Mortensen	28.80		.10	
								.70	16S	21W	12	SE¼ NW¼		J. Alfred Mortensen	28.60		.08	
								1.10	16S	21W	12	NE¼ SW¼		" " "	1.20		.01	
								5.80	16S	21W	12	NW¼ SW¼		" " "	42.20		.08	
								4.70	16S	21W	12	NW¼ NW¼		" " "	4.70		.01	
								5.10	16S	21W	12	N½ NE¼ SE¼		" " "	6.60		.01	
								4.60	16S	21W	12	NW¼ NW¼		Nancy O. Flynn	28.00		.08	
								.40	16S	21W	12	SW¼ NW¼		Willard E. Jones	73.20		.07	
								.80	16S	21W	12	NW¼ NW¼		" " "	54.40		.11	
								1.10	16S	21W	12	NE¼ NW¼		Ralph Richardson	27.60		.07	
								4.20	16S	21W	12	NW¼ NW¼		John E. Jones	2.40		.01	
								13.70	16S	21W	12	SW¼ NW¼		" " "	2.60		.01	
								1.40	16S	21W	12	SW¼ NE¼		" " "	8.00		.03	
								7.80	16S	21W	12	SE¼ NE¼		H. M. Payne	26.20		.06	
									16S	21W	12	SE¼ NW¼		" " "	83.20		.12	
United States	1901	Left	65	11E	1	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	48.00	8S	8E	6	NW¼ SW¼		" " "	8.40		.01	
													Final	Harriet E. Fetter	44.60		.09	
Montezuma Canal Company	1901	Left	75	27E	17	NE¼ NE¼	Montezuma Canal									242.00		.80
San Jose Canal Company	1901	Left	65	27E	34	SW¼ SW¼	San Jose Canal	3750.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		540.00		1.13
Sunflower Canal Company	1901	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for ownership data.		600.00		1.25
Graham Canal Company	1901	Right	7S	26E	9	NE¼ NW¼	Graham Canal	400.00	See Table No. 3 for detailed description of these lands.				Graham	See Table No. 3 for ownership data.		80.00		.19
Fort Thomas Consolidated Canal Company	1901	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2377.00	See Table No. 4 for detailed description of these lands.				Graham	See Table No. 4 for ownership data.		284.00		.45
Brown Canal Company	1901	Right	6S	29E	30	SE¼ SE¼	Brown Canal	2200.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for ownership data.		1320.00		2.75
Dodge-Nevada Canal Company	1901	Left	6S	25E	20	NE¼ NW¼	Dodge-Nevada Canal	520.00	See Table No. 8 for detailed description of these lands.				Graham	See Table No. 8 for ownership data.		260.00		.63
Sexton Canal Company	1901	Left	7S	31E	31	SW¼ SE¼	Sexton Ditch	1250.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for ownership data.		300.00		.63
								80.10	Tracts described below:				Greenlee	Ownership data as below:		308.60		.63
								5.60	7S	31E	5	NE¼ SE¼	"	" " "				
								1.70	7S	31E	6	SE¼ SE¼	"	" " "	51.00		.11	
								6.40	7S	31E	8	NW¼ SW¼	"	" " "	10.20		.02	
								31.00	7S	31E	8	SW¼ SW¼	"	" " "	38.40		.08	
								1.50	7S	31E	8	SE¼ SW¼	"	" " "	191.40		.40	
								5.50	Tracts described below:				"	" " "	8.00		.02	
								7.00	7S	31E	34	NE¼ NW¼						
								1.60	7S	31E	34	NW¼ NW¼	Greenlee	Ownership data as below: (Nellie E. Bush, Administratrix of the Estate of David Bush, deceased.	42.00	51.60	.09	.11
													"		8.60		.02	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company	1902	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		1740.00		2.63
San Jose Canal Company	1902	Left	8S	27E	34	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for ownership data.		860.00		1.30
SunFlower Canal Company	1902	Left	7S	26E	9	NW¼ SE¼	SunFlower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for ownership data.		60.00		.13
Graham Canal Company	1902	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for ownership data.		310.00		.44
Smithville Canal Company	1903	Left	6S	25E	6S	SW¼ NE¼	Smithville Canal	1780.00	See Table No. 10 for detailed description of these lands.				Graham	See Table No. 10 for ownership data.		90.00		.13
Sexton Canal Company	1902	Left	7S	31E	21	SW¼ SE¼	Sexton Ditch	82.90	Tracts described below:				Greenlee	Ownership data as below:		317.40		.66
								14.10	7S	31E	16	NE¼ NW¼	"	George M. Cooper	90.00		.19	
								26.40	7S	31E	16	NW¼ NW¼	"	" " "	132.40		.32	
								9.00	7S	31E	16	SW¼ NW¼	"	" " "	54.00		.11	
								2.40	7S	31E	16	SE¼ NW¼	"	" " "	14.40		.04	
Colmenero Canal Company	1902	Right	8S	31E	11	NW¼ SE¼	Colmenero Canal	81.90	Tracts described below:				Greenlee	Ownership data as below:		187.80		.39
								2.70	7S	31E	27	SW¼ SW¼	"	F. E. Ross	13.20		.19	
								1.80	7S	31E	23	SE¼ SE¼	"	" " "	10.40		.13	
								11.60	7S	31E	24	SW¼ NW¼	"	" " "	66.00		.14	
								.70	7S	31E	24	SW¼ NW¼	"	" " "	4.20		.01	
York Canal Company	1902	Right	8S	31E	29	SW¼ NW¼	York Canal	77.80	Tracts described below:				Greenlee	Ownership data as below:		466.80		.99
								16.00	8S	31E	17	SW¼ SW¼	"	E. M. Salcedo	90.00		.19	
								14.00	8S	31E	18	SE¼ SE¼	"	Ypolito Caravella	84.00		.18	
								37.40	8S	31E	20	NW¼ NW¼	"	" " "	224.40		.47	
								11.40	8S	31E	30	SW¼ NW¼	"	" " "	68.40		.14	
Montezuma Canal Company	1903	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	3780.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		648.00		1.13
San Jose Canal Company	1903	Left	8S	27E	34	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for ownership data.		880.00		1.25
SunFlower Canal Company	1903	Left	7S	26E	9	NW¼ SE¼	SunFlower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See table No. 5 for ownership data.		60.00		.13
Graham Canal Company	1903	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2877.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for ownership data.		894.00		1.55
Fort Thomas Consolidated Canal Company	1903	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	2300.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for ownership data.		600.00		1.25

157

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Colorado Canal Company	1903	Right	8S	31E	11	NW¼ SE¼	Colorado Canal	88.00	Tracts described below:				Graham	Ownership data as below:				
								37.00	7S	31E	31	NW¼ NE¼	"	J. E. Chilton	167.40	411.60	.28	
								1.20	7S	31E	31	NE¼ NW¼	"	" " "	1.20		.02	
								2.00	7S	31E	31	NW¼ NW¼	"	" " "	23.40		.16	
								.80	8S	31E	1	NW¼ NE¼	"	J. B. Cready	4.80		.01	
								14.40	8S	31E	1	SW¼ NE¼	"	" " "	88.40		.18	
								7.20	8S	31E	1	SW¼ NE¼	"	" " "	43.20		.09	
								.20	8S	31E	1	SE¼ NE¼	"	" " "	1.20		.02	
								.80	8S	31E	1	NW¼ NW¼	"	" " "	4.80		.01	
								1.80	8S	31E	2	SE¼ NW¼	"	" " "	10.40		.02	
								2.70	8S	31E	2	NE¼ SE¼	"	" " "	16.20		.03	
								1.60	8S	31E	2	NE¼ SE¼	"	" " "	22.40		.07	
								2.90	8S	31E	3	NW¼ SE¼	"	" " "	25.40		.05	
York Canal Company	1903	Right	6S	31E	29	SW¼ NW¼	York Canal	23.70	8S	31E	17	SW¼ SW¼	Graham	E. M. Schade		136.70		.28
United States	1904	Left	6S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal.	45.90	5S	8E	23	E½ NE¼	Pinal	John MacGregor Goodale		273.00		.84
Montezuma Canal Company	1904	Left	7S	27E	19	NE¼ NE¼	Montezuma Canal	3758.00	See Table No. 1 for detailed description of these lands.				Graham	See Table No. 1 for ownership data.		841.80		1.12
San Jose Canal Company	1904	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	3000.00	See Table No. 2 for detailed description of these lands.				Graham	See Table No. 2 for ownership data.		1200.00		2.50
Sunflower Canal Company	1904	Left	7S	26E	9	NW¼ SE¼	Sunflower Canal	400.00	See Table No. 5 for detailed description of these lands.				Graham	See Table No. 5 for ownership data.		80.00		.13
Graham Canal Company	1904	Right	7S	26E	9	NE¼ NW¼	Graham Canal	2377.00	See Table No. 6 for detailed description of these lands.				Graham	See Table No. 6 for ownership data.		1248.00		2.60
Fort Thomas Consolidated Canal Company	1904	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	2208.00	See Table No. 7 for detailed description of these lands.				Graham	See Table No. 7 for ownership data.		600.00		1.25
Dodge-Nevada Canal Company	1904	Left	6S	25E	30	NE¼ NW¼	Dodge-Nevada Canal	1250.00	See Table No. 9 for detailed description of these lands.				Graham	See Table No. 9 for ownership data.		300.00		.63
Curtis Canal Company	1904	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	267.20	Tracts described below:				Graham	Ownership data as below:		1043.80		2.60
								17.60	6S	24E	7	SE¼ SE¼	"	C. W. McEuen	198.80		.25	
								1.10	6S	24E	8	SW¼ SW¼	"	Virgil R. McEuen	16.80		.04	
								14.40	6S	24E	17	NW¼ NW¼	"	M. F. McEuen	92.40		.18	
								1.60	6S	24E	17	SW¼ NW¼	"	F. M. Farrell	25.60		.04	
								33.40	6S	24E	18	NE¼ SE¼	"	C. F. McEuen	230.60		.46	
								2.80	6S	24E	18	SE¼ SE¼	"	Virgil R. McEuen	18.20		.04	
								1.90	6S	24E	20	NE¼ NW¼	"	C. E. Ferris	11.40		.02	
								13.20	6S	24E	20	NW¼ NW¼	"	Scott Holliday	79.20		.16	
								29.80	6S	24E	29	SE¼ NW¼	"	E. O. Bullard	178.80		.37	
								2.80	6S	24E	28	NW¼ NW¼	"	J. D. Busby	12.80		.11	
								18.20	6S	24E	21	NE¼ SW¼	"	Henry A. Waters	61.20		.12	

(Continued)

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation means in sec-ft. Individual	Total	Maximum rate of diversion also in cu. ft. per sec. Individual	Total
Curtis Canal Company (continued)	1904											(Continued)						
								1.70	24S	22E	28	NE¼ SW¼	Graham	Calvin L. Kempton	10.20		.02	
								1.82	24S	22E	28	NE¼ SW¼	"	H. O. Reader	11.40		.02	
								5.20	24S	22E	28	NW¼ SW¼	"	W. D. Bailey	37.60		.08	
								2.60	24S	22E	28	NW¼ SW¼	"	Henry A. Waters	37.60		.12	
								5.85	24S	22E	28	SW¼ SW¼	"	Lee L. Palmer	51.60		.11	
								20.10	24S	22E	28	SW¼ SW¼	"	W. D. Bailey	122.60		.25	
								5.40	24S	23E	4	SE¼ NE¼	"	Amy T. Leavitt	32.40		.07	
								2.10	24S	23E	4	NE¼ SE¼	"	" " "	12.60		.02	
								.10	24S	23E	4	NW¼ SE¼	"	" " "	.60		.01	
Smithville Canal Company	1904	Left	6S	25E	28	SW¼ NE¼	Smithville Canal	88.00	Tracts described below:				Graham	Ownership data as below:		513.60		1.66
								12.00	24S	25E	33	SE¼ NE¼	"	M. J. Andrews	72.00		.10	
								1.50	24S	25E	33	NE¼ SE¼	"	" " "	9.00		.03	
								4.10	24S	25E	33	SE¼ NW¼	"	Karl Foster	24.60		.08	
								20.00	24S	25E	33	NE¼ SW¼	"	" "	120.00		.32	
								15.00	24S	25E	33	NW¼ SW¼	"	" "	170.40		.35	
								15.00	24S	25E	34	NW¼ NE¼	"	H. V. Cannon	120.00		.32	
Fort Thomas Consolidated Canal Company	1904	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	80.20	Tracts described below:				Graham	Ownership data as below:		391.20		.69
								40.20	6S	23E	32	SW¼ SE¼	"	Cesar Tyler	241.20		.95	
								10.10	5S	22E	2	NE¼ NE¼	"	" "	60.60		.12	
Graham Canal Company	1904	Right	7S	26E	9	NE¼ NW¼	Graham Canal	194.40	Tracts described below:				Graham	Ownership data as below:		1188.40		2.42
								8.80	6S	26E	7	NE¼ NW¼	"	John L. Hooper	44.00		.10	
								13.20	6S	26E	7	NW¼ NW¼	"	" "	84.40		.17	
								22.22	6S	25E	1	SE¼ SW¼	"	Simon Mathews	122.00		.28	
								15.00	6S	26E	17	SW¼ NE¼	"	J. L. Palmer	90.00		.19	
								15.00	6S	26E	17	NE¼ SE¼	"	J. L. Veach	90.00		.20	
								13.20	6S	26E	21	NE¼ NE¼	"	Melvin Wamsley	79.20		.16	
								17.80	6S	26E	21	NE¼ NW¼	"	J. A. Allen	106.80		.25	
								14.40	6S	26E	21	NW¼ SE¼	"	Brigham Stowell	84.00		.17	
								13.20	6S	26E	21	NE¼ SE¼	"	C. M. Mack	81.00		.17	
								11.10	6S	26E	22	SW¼ NE¼	"	Mary Butler	67.20		.14	
								7.20	6S	26E	22	SW¼ NW¼	"	" "	44.40		.09	
								16.30	6S	26E	22	SW¼ NW¼	"	Brigham Stowell	108.80		.24	
								1.30	6S	26E	22	SE¼ NW¼	"	Mary Butler	8.80		.01	
								21.70	6S	26E	22	SE¼ NW¼	"	J. A. Allen	132.20		.27	
								2.20	6S	26E	22	NW¼ SW¼	"	Joseph Howard & J. M. Howard	14.20		.03	
								.10	6S	26E	34	SW¼ NE¼	"	D. W. Sanders	.60		.01	
Montezuma Canal Company	1904	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	968.20	Tracts described below:				Graham	Ownership data as below:		4908.20		13.68
								4.20	7S	26E	7	SW¼ SW¼	"	Town of Thatcher	24.60		.05	
								5.20	7S	26E	7	SE¼ SW¼	"	" " "	85.80		.20	
								5.80	7S	26E	8	SE¼ SW¼	"	Mrs. Viola Lindsay	22.80		.05	
								1.40	7S	26E	8	SE¼ SW¼	"	J. A. Veley	8.40		.02	
								8.80	7S	27E	10	NE¼ NW¼	"	Town of Thatcher	66.00		.11	
								2.80	7S	27E	10	NW¼ NW¼	"	Mary A. Leyton	14.40		.02	
								7.00	7S	26E	10	NW¼ NE¼	"	A. A. Allred	42.00		.09	
								28.00	7S	27E	11	NE¼ NE¼	"	Town of Thatcher	168.00		.33	
								33.80	7S	27E	11	NW¼ NE¼	"	" " "	196.00		.38	
								23.00	7S	27E	11	NE¼ NW¼	"	" " "	138.00		.28	
								36.80	7S	27E	11	SW¼ NW¼	"	" " "	216.00		.45	
								19.80	7S	27E	11	NE¼ SW¼	"	" " "	117.00		.24	
												(continued)						

159

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company (continuation)	1904								(continuation)									
								18.22	7S	21E	13	NE¼NE¼	Graham	Town of Thatcher	23.00		.18	
								6.72	7S	21E	13	NW¼ SE¼	"	Ernest Coleman	60.50		.06	
								1.82	7S	21E	11	NW¼ SE¼	"	Grover C. Haywood	10.00		.01	
								.72	7S	21E	11	NW¼ SE¼	"	Guy W. Lamoreaux	4.70		.01	
								.72	7S	21E	12	SW¼ NW¼	"	S. V. Pollock	4.20		.01	
		1	82		7S	21E	12	SW¼ NW¼	"	Mrs. Sarah S. Elmer	8.82		.02					
		1	46		7S	21E	12	SE¼ NW¼	"	C. N. Moles	5.40		.02					
		4	23		7S	21E	12	NW¼ SW¼	"	E. L. Johns & D. L. Johns	21.22		.06					
			.82		7S	21E	12	NW¼ SW¼	"	Arizona Eastern Railroad Company	4.92		.01					
			.32		7S	21E	12	NW¼ SW¼	"	Evans Calkins	1.60		.01					
		12	.92		7S	21E	12	SE¼ SW¼	"	Mrs. Isabelle Pace	77.40		.16					
		1	.16		7S	21E	12	SE¼ SW¼	"	Marion Lee	5.60		.01					
		2	.72		7S	21E	12	SE¼ SW¼	"	M. Mortensen	13.52		.03					
		6	.10		7S	21E	13	SW¼ SE¼	"	Davidson Ellsworth	28.60		.06					
		5	.62		7S	21E	13	SE¼ NE¼	"	R. G. Layton, Jr.	35.42		.07					
		12	.92		7S	21E	13	NW¼ NE¼	"	J. D. Lee	77.40		.16					
		4	.72		7S	21E	13	SW¼ NE¼	"	L. B. Scarlett	32.52		.06					
		2	.92		7S	21E	13	SW¼ NE¼	"	W. H. Clifford	18.60		.04					
		1	.82		7S	21E	13	SE¼ NE¼	"	" " "	9.60		.02					
		4	.82		7S	21E	13	SE¼ NE¼	"	R. L. Frantzen	38.82		.07					
		1	.82		7S	21E	13	NW¼ NW¼	"	W. W. Wild	9.60		.02					
		4	.82		7S	21E	13	SW¼ NW¼	"	Alex Layton	27.62		.05					
		7	.02		7S	21E	13	SE¼ NW¼	"	George Killian	42.02		.08					
		5	.02		7S	21E	13	NE¼ SE¼	"	J. L. Freeman	10.00		.02					
		1	.16		7S	21E	13	NE¼ SE¼	"	Mrs. Belle Morris	4.60		.01					
		9	.16		7S	21E	13	NW¼ SE¼	"	Asahel Clifford	41.40		.08					
		4	.82		7S	21E	14	NE¼ NE¼	"	Marion Lee	31.82		.06					
		5	.02		7S	21E	13	SW¼ NW¼	"	William H. Gillespie	20.00		.04					
		12	.82		7S	21E	13	SW¼ NW¼	"	Shall Gillespie	75.00		.15					
		4	.15		7S	21E	13	SW¼ SW¼	"	Charles Boots	22.40		.05					
		11	.06		7S	21E	13	SE¼ SW¼	"	James Gillespie	42.98		.10					
		2	.02		7S	21E	13	NE¼ SE¼	"	Edward L. Gillespie	18.02		.04					
		14	.02		7S	21E	13	NW¼ SE¼	"	Albert Gillespie	87.02		.18					
		14	.82		7S	21E	18	SE¼ SE¼	"	Edward L. Gillespie	87.62		.18					
		4	.02		7S	21E	24	NE¼ NE¼	"	Edward M. Claridge	24.00		.05					
		4	.82		7S	21E	24	NW¼ SW¼	"	" " "	24.00		.05					
		21	.82		7S	21E	24	NW¼ SE¼	"	" " "	127.00		.49					
		2	.82		7S	21E	24	SE¼ SE¼	"	" " "	22.40		.05					
		9	.82		7S	21E	25	NE¼ NE¼	"	Charles M. Purday & Robert L. Nash	33.40		.07					
		14	.82		7S	21E	18	SE¼ SE¼	"	N. W. Sherrocamp	84.02		.17					
		4	.82		7S	21E	19	NE¼ SW¼	"	W. A. Johns & L. A. Johns	33.00		.07					
		36	.22		7S	21E	19	SW¼ SW¼	"	" " " " " "	217.32		.45					
		10	.22		7S	21E	25	SE¼ SW¼	"	" " " " " "	60.02		.12					
		2	.82		7S	21E	25	SE¼ NE¼	"	J. T. Owens, Jr.	14.56		.03					
		4	.82		7S	21E	19	NE¼ SW¼	"	L. A. Nelson	28.00		.06					
		14	.82		7S	21E	19	SE¼ SW¼	"	Mrs. Thomas Blake	32.00		.07					
		9	.82		7S	21E	19	NE¼ SE¼	"	O. E. Owens	64.00		.13					
		8	.82		7S	21E	19	NW¼ SE¼	"	Hugh Porter	28.48		.12					
		2	.82		7S	21E	19	SW¼ SE¼	"	" "	12.00		.03					
		2	.82		7S	21E	25	SE¼ SE¼	"	Ramon Quana	13.62		.03					
		4	.16		7S	21E	25	SE¼ SE¼	"	Joaquin Padilla	32.40		.04					
		7	.82		7S	21E	19	SW¼ NW¼	"	Lawrence Fuller	42.82		.09					
			.72		7S	21E	30	SE¼ NW¼	"	F. Chandia	4.40		.01					
			.02		7S	21E	30	SE¼ NW¼	"	Juan Aranda	4.02		.01					
		6	.32		7S	21E	17	SW¼ NE¼	"	C. S. Cheney, Administrator of the Estate of F. W. Hays, deceased.	37.92		.08					
									(continued)									

Party entitled to divert from the stream	Date of priority	Point of diversion: Stream	Location: Referred to G. & S. R. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description: Referred to G. & S. R. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation among lu ac. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company (continuation)	1904								(continuation)									
														Austin Evans	36	36	.18	
														Town of Safford	32	46	.16	
														George P. Jacobsen	14		.07	
														George Van Gessig	2		.01	
														Clarence Scarlett	2		.01	
														J. M. Wilson	4		.02	
														Ben T. Platt	6	38	.03	
														Church of Jesus Christ of Latter Day Saints	2	46	.01	
														T. A. Smith, Sr.	2		.01	
														H. P. Reeves	2		.01	
														John S. Quinn	11		.06	
														W. D. Child & Fred M. Mitchell	10		.05	
														John W. Morris	14		.07	
														W. A. Nemnich	6		.03	
														George Pavia	55		.28	
														W. D. Sager	2		.01	
														Willard Brandt	7		.04	
														Mrs. M. C. White	7		.04	
														Mrs. E. Olsen	7		.04	
														Wm. V. M. Baker	7		.04	
														Lee M. Stevens, Administrator of the Estate of Mrs. V. A. Bell, deceased.	2	45	.01	
														John Wood	2		.01	
														C. F. Hall	2		.01	
														J. P. Eckhart	2		.01	
														S. E. D. Scarr	2		.01	
														J. A. Chapman	2		.01	
														Mrs. Virginia Curtis	2		.01	
														A. Sorrell	2		.01	
														J. W. Greenhalgh	37		.19	
														Calleo R. Pool	15		.08	
														Claude Ellsworth	2		.01	
														Mrs. H. E. Warner	2		.01	
														C. M. Monk	2		.01	
														Town of Safford	25		.13	
														Donald Kennedy	2		.01	
														Myron J. Allred	7		.04	
														William H. Boyle	2		.01	
														Mrs. Francis Goodman	12		.06	
														William H. Beebe	14		.07	
														Martin Jacobsen	21	83	.10	
														County of Graham, State of Arizona	2		.01	
														J. Bingham	2		.01	
														J. H. Stephens	11		.06	
														F. E. Kirkpatrick	2		.01	
														Lester Stetham	2		.01	
														Mary Lorraine Birdno	17		.09	
														Mildred B. Larson	17		.09	
														C. O. Larson	17		.09	
														Elmo Olsen	17		.09	
														M. G. Monlleath	17		.09	
														Charles E. Prentice	17		.09	
														J. W. N. Scarlett	21		.10	
														Byron Bingham	14		.07	
														P. J. Jacobsen	4		.02	
														James Cordey	28		.14	
														Mrs. W. R. Reed	12		.06	
														W. H. Clifford				
									(continued)									

161

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. R. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company (continuation)	1904								(Continuation)									
								1. 70	7S	26E	18	SW¼ NE¼	Graham	Joseph Greenhalgh	10.00		.05	
								2. 68	7S	26E	18	SW¼ SE¼	"	Mrs. W. R. Reed	12.00		.06	
								3. 80	7S	26E	18	SE¼ SW¼	"	Earl D. Smyth	16.00		.08	
								4. 80	7S	26E	19	NE¼ NW¼	"	John R. Davidson	16.00		.08	
								5. 80	7S	26E	19	NW¼ NE¼	"	Mrs. C. F. Stanley	4.00		.02	
								6. 80	7S	26E	19	NE¼ SE¼	"	Mrs. W. R. Smith	28.40		.14	
								7. 80	7S	26E	19	SE¼ NE¼	"	William Elsworth	214.00		1.07	
								8. 80	7S	26E	19	SW¼ NW¼	"	William Elsworth	231.60		1.16	
								9. 80	7S	26E	19	NW¼ SW¼	"	Elam Olsen	232.00		1.16	
								10. 80	7S	26E	19	NE¼ NW¼	"	Victoriano Garcia	16.00		.08	
								11. 80	7S	26E	19	NW¼ NE¼	"	Henry Clifford, Sr.	88.00		.44	
								12. 80	7S	26E	19	NE¼ NW¼	"	Mrs. Nancy Palmer	24.00		.12	
								13. 80	7S	26E	19	NW¼ NW¼	"	Omer Olsen	24.00		.12	
								14. 80	7S	26E	19	SW¼ NW¼	"	William Elsworth	24.00		.12	
								15. 80	7S	26E	19	NE¼ SW¼	"	W. L. Nelson	48.00		.24	
								16. 80	7S	26E	19	SW¼ NE¼	"	William Elsworth	24.00		.12	
								17. 80	7S	26E	19	NE¼ NW¼	"	W. L. Nelson	24.00		.12	
								18. 80	7S	26E	19	NW¼ NW¼	"	Fred H. Wimmer	24.00		.12	
								19. 80	7S	26E	19	SW¼ NW¼	"	E. E. Monteith	42.00		.21	
								20. 80	7S	26E	19	SE¼ NW¼	"	J. A. Clifford	22.00		.11	
								21. 80	7S	26E	19	SW¼ NW¼	"	Elijah Clifford	78.00		.39	
								22. 80	7S	26E	19	NE¼ NE¼	"	Jan Mauer	82.00		.41	
								23. 80	7S	26E	19	NW¼ NE¼	"	Marvel Larsen	41.00		.21	
								24. 80	7S	26E	19	SW¼ NE¼	"	S. A. Merrill	82.00		.41	
								25. 80	7S	26E	19	SE¼ NW¼	"	Mrs. Margaret R. Kempton	40.00		.20	
								26. 80	7S	26E	19	NW¼ NW¼	"	W. T. Storey	44.00		.22	
								27. 80	7S	26E	19	SW¼ NW¼	"	" " "	37.00		.19	
								28. 80	7S	26E	19	NE¼ SW¼	"	" " "	2.00		.01	
								29. 80	7S	26E	19	NW¼ SW¼	"	" " "	84.00		.42	
								30. 80	7S	26E	19	SW¼ SW¼	"	W. S. Baker	8.00		.04	
								31. 80	7S	26E	19	NE¼ NE¼	"	Isaac Williamson	18.00		.09	
								32. 80	7S	26E	19	NW¼ NE¼	"	Arthur Walker	81.00		.41	
								33. 80	7S	26E	19	SW¼ NE¼	"	Ernest Meier	81.00		.41	
								34. 80	7S	26E	19	NE¼ SW¼	"	Mercilido Gallaiva	16.00		.08	
								35. 80	7S	26E	19	SE¼ SW¼	"	Christine Gallaiva	16.00		.08	
								36. 80	7S	26E	19	NW¼ SW¼	"	H. M. Merrill	78.00		.37	
San Jose Canal Company	1904	Left	6S	27E	34	SW¼ SW¼	San Jose Canal	122.32	Tracts described below:				Graham	Ownership data as below:		722.20		1.94
								17.	7S	26E	3	NW¼ NE¼	"	E. H. Precienthal	77.20		.36	
								23.	7S	26E	3	NE¼ SE¼	"	Clyde Curtis & Dan Curtis	192.80		.96	
								31.	7S	26E	3	NW¼ SE¼	"	" " " " " "	192.80		.96	
								38.	7S	26E	3	SE¼ NE¼	"	" " " " " "	186.20		.93	
								39.	7S	26E	3	SW¼ SW¼	"	" " " " " "	174.00		.87	
								26.	7S	26E	4	SE¼ SW¼	"	S. N. Holman	1.20		.01	
											10	NE¼ NW¼	"	" " "	194.80		.97	
											14	NW¼ NW¼	"	" " "	4.00		.02	
Union Canal Company	1904	Left	7S	27E	15	SE¼ SW¼	Union Canal	68.80	Tracts described below:				Graham	Ownership data as below:		412.80		.86
								1. 70	7S	26E	13	NW¼ NE¼	"	Mrs. William Johns	10.20		.05	
											13	SW¼ NE¼	"	" " "	1.20		.01	
								24. 68	7S	26E	5	NW¼ SW¼	"	D. C. Johnson	136.00		.68	
								25. 68	7S	26E	8	SW¼ SW¼	"	" " "	224.00		1.12	
								5. 80	7S	26E	17	NE¼ NW¼	"	John L. Hoopes & H. P. Hoopes	69.40		.17	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Colmenero Canal Company	1904	Right	8S	21E	11	NW¼ SE¼	Colmenero Canal	42.90	Tracts described below:				Grenales	Ownership data as below:		267.40		.84
								23.50	7S	21E	23	NE¼ NE¼	"	J. G. Smith	142.80		.30	
								1.90	7S	21E	23	NW¼ NE¼	"	" " "	11.40		.03	
								1.90	7S	21E	23	SW¼ NE¼	"	" " "	11.40		.03	
								15.30	7S	21E	24	SE¼ NE¼	"	" " "	91.80		.20	
Valley Canal Company	1904	Right	16S	21W	4	NE¼ NW¼	Valley Canal	89.20	Tracts described below:				Grenales	Ownership data as below:		734.20		.80
								14.00	8S	21E	13	SE¼ SE¼	"	G. L. Elmer	90.00		.20	
								24.20	8S	22E	7	SW¼ SW¼	"	" " "	145.20		.32	
Cooper & Windham Extension Canal Company. Under Contract whereby Cooper & Windham Ditch makes actual diversion	1904	Right	16S	21W	11	NW¼ SE¼	Cooper & Windham Ditch & Cooper & Windham Extension Canal.	11.00	8S	22E	24	SE¼ NE¼	Grenales	A. T. Layton		66.00		.14
Cooper & Windham Canal Company	1904	Right	16S	21W	11	NW¼ SE¼	Cooper & Windham Canal	45.30	Tracts described below:				Hidalgo	Ownership data as below:		272.40		.87
								17.30	16S	21W	33	SE¼ SE¼	"	Penley F. Merrill	102.80		.22	
								11.20	16S	21W	3	Lot 4	"	J. R. Beavers	67.20		.14	
								17.10	16S	21W	4	Lot 1	"	" " "	102.60		.21	
Sunset Canal Company	1904	Right	16S	22W	21	SW¼ NW¼	Sunset Canal	20.20	Tracts described below:				Hidalgo	Ownership data as below:		121.80		.38
								14.10	16S	21W	24	SW¼ SW¼	"	Owen A. Merrill	84.60		.18	
								6.10	16S	21W	25	SE¼ SE¼	"	" " "	37.20		.07	
Graham Canal Company	1903	Right	7S	24E	9	NE¼ NW¼	Graham Canal	98.30	Tracts described below:				Graham	Ownership data as below:		671.80		1.19
								1.90	6S	21E	11	NE¼ NW¼	"	James A. McBride	11.40		.02	
								4.30	6S	24E	1	NW¼ NW¼	"	" " "	25.80		.04	
								27.60	6S	24E	1	SE¼ NW¼	"	" " "	165.60		.28	
								22.00	6S	24E	2	NE¼ SW¼	"	W. E. Platt	132.00		.37	
								29.80	6S	24E	2	NW¼ SE¼	"	" " "	177.00		.50	
								8.00	6S	24E	12	SW¼ NE¼	"	H. R. Chiarson	64.00		.11	
								1.00	6S	24E	12	SE¼ NE¼	"	" " "	6.00		.01	
Fort Thomas Consolidated Canal Company	1903	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	72.30	Tracts described below:				Graham	Ownership data as below:		431.80		.68
								29.10	6S	23E	20	SE¼ SE¼	"	Alonzo Wisner	174.60		.25	
								10.60	6S	23E	27	NW¼ SW¼	"	T. L. Wills	63.60		.12	
								9.40	6S	23E	27	SW¼ SW¼	"	" " "	56.40		.10	
								21.20	6S	24E	29	NE¼ NW¼	"	Lonie Mortierth & Wendell Mortierth	127.20		.37	
San Jose Canal Company	1903	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	89.70	Tracts described below:				Graham	Ownership data as below:		538.20		1.10
								1.60	7S	23E	21	NE¼ SE¼	"	Cleero Morris	9.00		.03	
								35.80	7S	23E	21	NW¼ SE¼	"	" " "	214.80		.45	
								37.30	7S	23E	21	SW¼ SE¼	"	William Walker	223.80		.47	
								13.10	7S	23E	21	SW¼ NE¼	"	Cleero Morris	78.60		.16	
Colmenero Canal Company	1903	Right	8S	21E	11	NW¼ SE¼	Colmenero Canal	32.70	Tracts described below:				Grenales	Ownership data as below:		196.20		.41
								17.20	7S	21E	31	SW¼ SE¼	"	Mrs. M. J. Daniels	103.20		.21	
								14.05	7S	21E	31	SE¼ SE¼	"	" " "	90.00		.20	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location: Referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description: Referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Further owning said lands when jurisdiction assumed herein	Diversion right: For irrigation season in ac. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Valley Canal Company	1908	Right	10S	21W	11	NW¼ SE¼	Valley Canal	22.00	Tracts described below:							77.40		.14
								16.40	8S	21E	15	NE¼ SE¼	"	Stadair Realty Company	82.40		.12	
								2.50	8S	22E	7	NW¼ SW¼	"	" " "	15.00		.02	
Meddis Canal Company	1908	Left	10S	21W	11	NW¼ SE¼	Meddis Canal	48.00	Tracts described below:							294.00		.61
								18.20	8S	22E	29	NW¼ SE¼	"	O. L. Hart	115.80		.24	
								29.70	8S	22E	29	SW¼ SE¼	"	Frank Schultz	178.20		.37	
Fort Thomas Consolidated Canal Company	1908	Left	6S	24E	6	NE¼ NW¼	Fort Thomas Consolidated Canal	72.30	Tracts described below:							443.80		.92
								14.70	4S	22E	24	NE¼ SW¼	"	J. H. Fish	88.20		.18	
								1.10	4S	23E	24	SE¼ SW¼	"	" " "	6.60		.03	
								32.30	4S	23E	25	NW¼ NE¼	"	" " "	193.80		.40	
								24.20	4S	23E	26	SW¼ SE¼	"	" " "	151.20		.31	
Graham Canal Company	1908	Right	7S	24E	6	NE¼ NW¼	Graham Canal	142.50	Tracts described below:							881.00		1.80
								18.40	6S	24E	1	NW¼ SW¼	"	John L. Hooper	110.40		.22	
								8.70	6S	24E	1	SE¼ SW¼	"	Hober B. Bryce	40.20		.08	
								18.00	6S	24E	1	SW¼ SE¼	"	John L. Hooper	108.00		.22	
								18.40	6S	24E	17	NE¼ NW¼	"	Mrs. A. W. Cheney	92.40		.18	
								18.80	6S	24E	17	NW¼ NE¼	"	" " "	117.00		.24	
								2.80	6S	24E	21	NW¼ NW¼	"	A. T. West	15.00		.02	
								2.30	6S	24E	21	SW¼ NW¼	"	A. T. West	12.60		.02	
								22.80	6S	24E	21	NE¼ NW¼	"	" " "	184.80		.38	
								.10	6S	24E	21	NE¼ SW¼	"	" " "	.60		.01	
								8.80	6S	24E	21	NW¼ NE¼	"	" " "	44.40		.09	
								13.00	6S	24E	36	SE¼ SE¼	"	Francis M. Skinner	72.00		.15	
Nevada Consolidated Copper Company.	1908	Right	8S	18E	14	SE¼ SW¼, SW¼ SE¼, NE¼ NW¼	Pumps		Use of water for industrial, Municipal, domestic and related purposes.					Gila	For further definition of this right see Article IX.		90.00		.20
			8S	18E	23													
Montezuma Canal Company	1908	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	8.00	Tracts described below:							48.00		.10
								2.80	7S	26E	10	NE¼ NW¼	"	J. A. Farley	16.80		.03	
								2.80	7S	26E	10	NE¼ NW¼	"	Mrs. Nida Lindsey	16.80		.03	
San Jose Canal Company	1908	Left	6S	27E	32	SW¼ SW¼	San Jose Canal	73.20	Tracts described below:							437.80		.98
								20.00	7S	26E	21	SE¼ SW¼	"	Omar Olsen	120.00		.26	
								25.60	7S	26E	21	NE¼ SE¼	"	Ernest Ellsworth	153.60		.32	
								5.10	7S	26E	21	SW¼ NE¼	"	" " "	30.60		.06	
								22.60	7S	26E	21	SE¼ NE¼	"	" " "	133.60		.34	
Union Canal Company	1908	Left	7S	27E	18	SE¼ NW¼	Union Canal	68.20	Tracts described below:							382.80		.80
								28.80	6S	24E	34	NW¼ SW¼	"	F. G. Merrell	222.80		.42	
								4.80	6S	24E	34	NW¼ SE¼	"	O. R. Maloy	27.00		.06	
								2.70	6S	24E	16	NW¼ SW¼	"	Sarah Taylor	15.80		.04	
								32.20	6S	24E	16	SW¼ SW¼	"	W. R. Mahaffa	121.20		.28	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac. ft. Individual	Total	Maximum rate of diversion in cu. ft. per sec. Individual	Total
York Canal Company	1906	Right	5S	31E	29	SW¼ NW¼	York Canal	85.32	Tracts described below:				Grenlee	Ownership data as below:		408.80		.55
								2.32	6S	31E	17	SW¼ NW¼	"	Ora Denman	18.20		.04	
								22.32	6S	31E	17	NW¼ SW¼	"	" " "			.28	
								21.10	6S	31E	19	NE¼ NE¼	"	George A. Wilson	141.00		.27	
								16.90	6S	31E	19	SE¼ NE¼	"	" " "	136.00		.22	
															110.00			
Moddle Canal Company	1906	Left	18S	31W	11	NW¼ SE¼	Moddle Canal	20.72	8S	33E	29	NE¼ SE¼	Greenlee	Mrs. M. E. Pittman		194.20		.26
Calvin-Jones Canal Company	1907	Right	4S	23E	25	SW¼ SW¼	Calvin-Jones Canal	34.10	Tracts described below:				Graham	Ownership data as below:		204.60		.43
								1.10	4S	22E	23	NE¼ SW¼	"	C. F. Higgins	5.80		.01	
								11.50	4S	23E	23	NW¼ SW¼	"	" " "	69.00		.14	
								.10	4S	23E	23	SW¼ SW¼	"	" " "	.60		.01	
								21.40	4S	23E	23	SE¼ SW¼	"	" " "	128.40		.27	
Curtis Canal Company	1907	Right	6S	24E	13	NW¼ NW¼	Curtis Canal	23.20	Tracts described below:				Graham	Ownership data as below:		163.20		.41
								7.20	5S	24E	20	SE¼ SE¼	"	L. M. Thatcher	42.00		.09	
								8.60	5S	24E	29	NE¼ SW¼	"	A. J. Kempton	93.00		.20	
								15.90	5S	24E	29	SE¼ SW¼	"	Calvin I. Kempton & Heber Kempton	93.00		.19	
								6.20	6S	24E	2	NE¼ SW¼	"	Joseph Meyer	31.20		.07	
Graham Canal Company	1907	Right	7S	26E	9	NE¼ NW¼	Graham Canal	82.06	Tracts described below:				Graham	Ownership data as below:		492.00		1.02
								8.70	6S	24E	2	NW¼ NE¼	"	M. M. Hannah	24.20		.07	
								20.80	6S	24E	2	NE¼ NW¼	"	" " "	124.80		.25	
								17.20	6S	24E	2	SW¼ NE¼	"	John Billingsley	102.20		.21	
								5.20	6S	24E	2	SE¼ NW¼	"	" " "	31.20		.07	
								9.20	6S	24E	2	SW¼ NE¼	"	Robert Mackey	47.20		.10	
								21.70	6S	24E	2	SE¼ NW¼	"	" " "	143.20		.30	
Smithville Canal Company	1907	Left	5S	24E	23	SW¼ NE¼	Smithville Canal	382.22	Tracts described below:				Graham	Ownership data as below:		1895.00		3.83
								2.80	5S	24E	13	NW¼ NW¼	"	John H. Foster	17.40		.04	
								1.20	5S	24E	14	NE¼ NW¼	"	Ray Selins	7.80		.01	
								9.70	5S	24E	14	NW¼ NW¼	"	P. H. McBride, Jr.	64.20		.13	
								2.80	5S	24E	14	SW¼ NW¼	"	P. H. McBride	18.20		.04	
								5.60	5S	24E	14	SW¼ NW¼	"	P. H. McBride, Jr.	36.40		.11	
								14.80	5S	24E	14	SE¼ NW¼	"	John H. Foster	96.20		.19	
								15.60	5S	24E	14	SE¼ NW¼	"	Ray Selins	78.80		.16	
								4.20	5S	24E	14	SW¼ SW¼	"	Laura McBride	21.20		.04	
								16.20	5S	24E	14	NE¼ SW¼	"	Karl Porter	105.80		.21	
								7.80	5S	24E	15	NW¼ SW¼	"	W. J. Frazier	41.60		.08	
								6.40	5S	24E	15	SW¼ SW¼	"	" " "	33.60		.06	
								15.80	5S	24E	15	SE¼ SW¼	"	" " "	109.20		.21	
								12.80	5S	24E	15	SW¼ SE¼	"	Karl Porter	72.00		.14	
								2.60	5S	24E	16	NE¼ NE¼	"	Mrs. Sarah Barney	14.40		.02	
								6.80	5S	24E	16	NW¼ NE¼	"	Albert Carter	33.00		.07	
								4.10	5S	24E	16	NE¼ NE¼	"	Ethel McBride	24.60		.05	
								1.70	5S	24E	16	NE¼ NE¼	"	L. L. Tullett	10.20		.02	
								1.80	5S	24E	16	NW¼ NE¼	"	Mrs. Olivea Larsen	8.80		.02	
								3.80	5S	24E	16	NW¼ NE¼	"	H. J. Clark	18.80		.04	
								14.00	5S	24E	16	SW¼ NE¼	"	W. A. Carter, Jr.	97.60		.18	
								4.80	5S	24E	16	SW¼ NE¼	"	Mrs. Olivea Larsen	32.80		.06	
									(continued)									

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in c.f.s.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Smithville Canal Company (Continuation)	1907											(continuation)						
								2.00	6S	24E	14	SE¼ NE¼	Graham	Ethel McBride	12.00		.60	
								20.80	6S	24E	14	SE¼ NE¼	"	Karl Parker	180.00		.320	
								7.90	6S	24E	14	SE¼ NE¼	"	Mrs. Sarah Bryce	67.00		.120	
								4.55	6S	24E	14	NE¼ NW¼	"	Ethel D. Carter & Walter Batty	35.00		.060	
								16.15	6S	24E	14	NW¼ NW¼	"	" " " "	95.00		.170	
								23.85	6S	24E	14	NE¼ SE¼	"	" " " "	135.00		.240	
								1.40	6S	24E	14	NW¼ NE¼	"	Mrs. Sarah Bryce	8.40		.010	
								5.72	6S	24E	14	NW¼ NE¼	"	Lehi Larsen, Sr.	43.20		.080	
								10.90	6S	24E	14	NE¼ NW¼	"	C. B. Beers	62.00		.110	
								14.30	6S	24E	14	SE¼ NW¼	"	W. A. Clarke, Jr.	82.00		.150	
															97.20		.30	
Fort Thomas Consolidated Canal Company	1907	Left	6S	24E	4	NW¼ NW¼	Fort Thomas Consolidated Canal	38.45	Tracts described below:				Graham	Ownership data as below:		230.40		.68
								7.30	4S	23E	19	NE¼ NE¼	"	L. M. Taylor	42.20		.080	
								16.30	4S	23E	27	SW¼ SW¼	"	T. L. Wells	97.20		.18	
								2.80	4S	23E	28	NE¼ SW¼	"	Edgar E. Cheeley	16.60		.030	
								12.40	4S	23E	34	NW¼ NW¼	"	George F. Ballard	74.40		.130	
								.10	4S	23E	35	SW¼ NW¼	"	" " "	.60		.01	
Montezuma Canal Company	1907	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	4.10	7S	28E	10	SE¼ NE¼	Graham	John Stowe		24.60		.05
San Jose Canal Company	1907	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	617.48	Tracts described below:				Graham	Ownership data as below:		3,804.40		6.22
								20.25	7S	26E	17	SW¼ SW¼	"	Austin Evans	121.80		.22	
								2.20	7S	26E	17	SE¼ SW¼	"	Calista B. Post	13.20		.024	
								7.75	7S	26E	18	NW¼ SW¼	"	M. O. Monteith	46.50		.085	
								21.05	7S	26E	18	SW¼ SW¼	"	J. W. N. Benfield	126.30		.23	
								4.75	7S	26E	18	SE¼ SW¼	"	" " "	28.50		.052	
								16.70	7S	26E	19	SW¼ SE¼	"	F. E. Kirkpatrick	100.20		.18	
								7.85	7S	26E	19	SW¼ SE¼	"	John H. Harper	47.10		.086	
								12.90	7S	26E	19	SE¼ SE¼	"	" " "	77.40		.14	
								27.20	7S	26E	19	NE¼ NE¼	"	Hart D. Hayes	163.20		.30	
								23.10	7S	26E	19	NW¼ NE¼	"	W. E. Waddell	138.60		.25	
								36.60	7S	26E	19	NE¼ NW¼	"	" " "	219.60		.40	
								7.75	7S	26E	19	NW¼ NW¼	"	Alma Proctora	46.50		.085	
								2.80	7S	26E	19	NW¼ NE¼	"	" " "	16.80		.030	
								.80	7S	26E	20	SW¼ NE¼	"	John P. Davidson	4.80		.010	
								24.75	7S	26E	20	NE¼ NW¼	"	" " "	148.50		.27	
								31.95	7S	26E	20	NW¼ NW¼	"	J. W. Greenhalgh	191.70		.35	
								2.85	7S	26E	20	NE¼ SE¼	"	John West	17.10		.030	
								1.75	7S	26E	20	SE¼ SE¼	"	Mrs. W. H. Smith	10.50		.020	
								18.90	7S	26E	21	SW¼ NE¼	"	William Ellsworth	113.40		.21	
								18.20	7S	26E	21	SW¼ NE¼	"	W. A. Wesley	83.20		.15	
								7.60	7S	26E	21	SE¼ NW¼	"	Wallace Bennett	118.80		.22	
								16.20	7S	26E	21	SE¼ NW¼	"	W. R. Poste	48.60		.090	
								6.70	7S	26E	21	NE¼ SW¼	"	" " "	40.20		.075	
								8.20	7S	26E	21	NE¼ SW¼	"	James Jensen	49.20		.090	
								22.60	7S	26E	21	NW¼ SE¼	"	W. A. Wesley	37.20		.070	
								6.35	7S	26E	21	NW¼ SE¼	"	Delbert Hatch	201.60		.37	
								1.95	7S	26E	21	SW¼ SE¼	"	A. C. Hunt	37.80		.070	
								.30	7S	26E	21	NE¼ NW¼	"	Mrs. F. M. Madhurst	11.40		.020	
								.30	7S	26E	21	SE¼ NW¼	"	Ernesto Ochoba	1.80		.003	
									7S	26E	21	SW¼ NE¼	"	" " "	1.80		.003	

166

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location: Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description: Referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season to sec.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Union Canal Company	1887	Left	7S	27E	18	SE¼ NW¼	Union Canal	1045.95	Tracts described below:				Graham	Ownership data as below:		8275.40		13.05
								31.30	6S	24E	13	SW¼ SE¼	"	J. B. Blake	127.85		.77	
								12.70	6S	24E	13	SE¼ SW¼	"	" " "	52.32		.13	
								10.05	6S	24E	13	SW¼ SW¼	"	W. J. Preston	68.33		.14	
								33.20	6S	24E	24	NE¼ NE¼	"	Milton Lisse	168.23		.34	
								22.03	6S	24E	24	NW¼ NE¼	"	J. B. Blake	168.90		.34	
								17.42	6S	24E	24	SW¼ NE¼	"	Mrs. Virgie E. Wilson	154.42		.32	
								18.72	6S	24E	24	SE¼ NE¼	"	Fred Webb	118.28		.24	
								7.80	6S	24E	24	SE¼ NE¼	"	Roger D. Green	46.84		.10	
								14.22	6S	24E	24	NE¼ NW¼	"	C. E. Ferris	87.20		.18	
								1.20	6S	24E	24	NE¼ NW¼	"	J. B. Blake	7.35		.02	
								21.60	6S	24E	24	SW¼ NW¼	"	C. B. Maley	129.60		.27	
								34.35	6S	24E	24	SE¼ NW¼	"	Fred Webb	211.50		.44	
								34.50	6S	24E	24	SE¼ SW¼	"	Clark Mequire	207.00		.43	
								5.63	6S	24E	24	SW¼ SW¼	"	Joseph Rogers	34.38		.07	
								37.80	6S	24E	24	SE¼ SW¼	"	Mrs. Louisa Rogers	226.80		.47	
								1.70	6S	24E	24	NE¼ SE¼	"	P. C. Merrill	10.20		.02	
								7.35	6S	24E	24	SE¼ SE¼	"	W. C. Eyring	42.35		.09	
								24.10	6S	24E	24	SW¼ SE¼	"	" " "	138.58		.31	
								1.90	6S	24E	24	SE¼ SE¼	"	" " "	11.02		.02	
								11.30	6S	24E	25	NW¼ NE¼	"	P. C. Merrill	57.30		.12	
								1.30	6S	24E	25	NW¼ NE¼	"	Joseph Rogers	7.35		.02	
								2.40	6S	24E	25	SW¼ NE¼	"	P. C. Merrill	14.40		.03	
								25.85	6S	24E	25	NE¼ NW¼	"	Joseph Rogers	146.38		.30	
								6.85	6S	24E	25	NE¼ NW¼	"	P. C. Merrill	34.25		.07	
								18.80	6S	24E	25	NW¼ NW¼	"	Joseph Rogers	112.80		.24	
								11.95	6S	24E	25	SW¼ SW¼	"	Mrs. Louisa Rogers	71.70		.15	
								8.80	6S	24E	25	SE¼ NW¼	"	P. C. Merrill	44.00		.09	
								1.35	6S	24E	25	NE¼ NW¼	"	Joseph Rogers	7.35		.02	
								4.80	6S	24E	25	SW¼ NW¼	"	Joseph Alder	28.80		.06	
								27.80	6S	24E	25	NW¼ SW¼	"	John W. Allen	166.80		.35	
								37.80	6S	24E	25	SW¼ SW¼	"	M. F. Preston	226.80		.48	
								17.35	6S	24E	25	SE¼ SW¼	"	Joseph Alder	104.10		.22	
								4.20	6S	24E	25	NW¼ NE¼	"	Elmer G. Ferris	24.20		.05	
								12.80	6S	24E	25	NE¼ NE¼	"	" " "	76.80		.16	
								18.80	6S	24E	25	SW¼ NE¼	"	" " "	108.80		.23	
								10.80	6S	24E	25	SE¼ NE¼	"	C. E. Ferris	64.80		.14	
								7.40	6S	24E	25	NE¼ NW¼	"	C. M. Hall	44.40		.09	
								8.40	6S	24E	25	NW¼ NW¼	"	F. M. Kelly	50.40		.11	
								16.20	6S	24E	25	NE¼ NW¼	"	John Cluff	97.20		.21	
								15.10	6S	24E	25	SW¼ NW¼	"	C. D. Negale	90.60		.19	
								52.80	6S	24E	25	SW¼ SW¼	"	" " "	316.80		.68	
								36.00	6S	24E	25	SE¼ SW¼	"	W. F. Preston	216.00		.46	
								24.00	6S	24E	25	NW¼ SW¼	"	" " "	144.00		.31	
								11.60	6S	24E	25	SW¼ SW¼	"	" " "	69.60		.15	
								27.80	6S	24E	25	SE¼ SW¼	"	A. Reimer	166.80		.36	
								29.10	6S	24E	25	NW¼ SE¼	"	J. E. Reed	174.60		.37	
								40.00	6S	24E	25	NE¼ SE¼	"	C. M. Reed	240.00		.51	
								8.10	6S	24E	25	SE¼ SE¼	"	Mrs. Layman Dodge	24.30		.05	
								28.20	6S	24E	25	SW¼ SE¼	"	W. F. Preston	169.20		.36	
								16.70	6S	24E	25	SE¼ SE¼	"	E. E. Allen	94.20		.20	
								16.80	6S	24E	25	SE¼ SE¼	"	W. J. Mallers	97.80		.21	
								44.20	6S	24E	25	NE¼ NE¼	"	E. E. Allen	311.40		.66	
								.90	6S	24E	25	NE¼ NE¼	"	James Mallers	4.50		.01	
								52.80	6S	24E	25	NW¼ NW¼	"	" " "	314.80		.68	
								10.00	6S	24E	25	SW¼ NW¼	"	W. M. Ferris	60.00		.13	
								7.80	6S	24E	25	SE¼ NW¼	"	W. M. Kerry	46.80		.10	
								7.10	6S	24E	25	NE¼ NE¼	"	D. T. Preston	42.60		.09	
								4.70	6S	24E	25	NE¼ NW¼	"	W. L. Ferris	24.70		.05	
								38.40	6S	24E	25	NW¼ NW¼	"	Joseph Alder	230.40		.49	
								26.80	6S	24E	25	NW¼ NW¼	"	M. F. Preston	227.80		.48	
								14.80	6S	24E	25	SW¼ NW¼	"	D. T. Preston	94.80		.20	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in sec.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
R. H. Angle	1907	Right	Direct from river				Pumping Plant	4.90	6S	30E	1	NE¼ SW¼	Greenlee	R. H. Angle		24.60		.08
								5.90	6S	30E	1	NW¼ SE¼				25.80		.07
Colmenero Canal Company	1907	Right	8S	31E	11	NW¼ SE¼	Colmenero Canal	134.90	Tracts described below:				Greenlee	Ownership data as below:		775.40		1.83
								15.70	7S	31E	16	NE¼ SW¼		George H. Cooper	24.20		.08	
								15.70	7S	31E	16	NW¼ SW¼			23.20		.07	
								6.80	7S	31E	21	SW¼ SE¼		Albert L. Barber	27.20		.11	
								27.80	7S	31E	21	SW¼ NE¼		Roy D. Williams	108.80		.43	
								6.80	7S	31E	21	NW¼ SE¼		Sam R. Tilley	27.20		.11	
								27.80	7S	31E	21	NE¼ SW¼			123.80		.49	
								1.80	7S	31E	27	SW¼ SW¼		F. N. Gault	34.60		.14	
								2.20	7S	31E	28	SW¼ NE¼			8.80		.03	
								12.20	7S	31E	28	SE¼ NE¼		H. B. Harris	2.20		.01	
								9.80	7S	31E	28	NE¼ SE¼			39.20		.16	
								1.10	8S	32E	29	NW¼ NW¼		F. N. Gault	4.40		.02	
Duncan Canal Company	1907	Left	8S	32E	32	NE¼ NW¼	Duncan Canal								23.80		.09	
United States	1903	Left	4S	31E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence – Casa Grande Canal.	430.00	Tracts described below:				Greenlee	J. W. Carter & M. H. Brooks		18.80		.64
								42.00	8S	32E	3	SW¼ NW¼ NW¼	Pinal	Ownership data as below:		2850.00		3.97
								16.00	8S	32E	3	SW¼ NW¼		J. J. Fraser	348.80		1.22	
								71.60	8S	32E	3	W½ SW¼			480.80		1.67	
								125.10	8S	32E	4	NE¼			160.10		1.22	
								157.80	8S	32E	4	NE¼			735.60		2.55	
								48.80	8S	32E	4	SE¼			244.80		1.22	
															382.80		1.33	
Dodge-Nevada Canal Company	1908	Left	4S	28E	29	NE¼ NW¼	Dodge-Nevada Canal	4.10	4S	24E	10	NW¼ SE¼	Graham	G. R. Farley		24.60		.08
Fort Thomas Consolidated Canal Company	1908	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	110.80	Tracts described below:				Graham	Ownership data as below:		665.00		1.89
								4.00	4S	23E	17	NW¼ SW¼		J. E. Fulcipher	24.00		.08	
								21.10	4S	23E	18	SE¼ NE¼		J. M. Holyoak	120.80		.42	
								14.80	4S	23E	18	NE¼ SE¼		S. E. Reynolds	88.80		.31	
								1.80	4S	23E	18	NW¼ SE¼			4.00		.02	
								4.10	4S	23E	24	NW¼ NE¼		George W. Healy	24.60		.08	
								8.70	4S	23E	24	NE¼ NW¼		George F. Ballard	52.20		.18	
								12.80	4S	23E	24	NW¼ NW¼			73.80		.25	
								7.00	4S	23E	24	SW¼ NW¼		George W. Healy	42.00		.15	
								17.20	4S	23E	24	SE¼ NW¼			103.20		.36	
								17.20	4S	23E	24	NE¼ SW¼						
Graham Canal Company	1908	Right	7S	26E	9	NE¼ NW¼	Graham Canal	191.80	Tracts described below:				Graham	Ownership data as below:		1172.00		2.46
								24.80	6S	24E	1	SW¼ NW¼		John L. Hooper	180.00		.38	
								24.20	6S	24E	1	SW¼ SW¼		Asher B. Hyre	148.80		.31	
								7.90	6S	24E	11	NW¼ NE¼			45.80		.09	
								24.70	6S	24E	11	NE¼ NE¼		Martha A. Merrill	172.20		.36	
								35.10	6S	24E	11	NW¼ SE¼		R. E. Hancock	44.20		.09	
								4.80	6S	24E	11	SW¼ SE¼		Simon Mathews	183.80		.38	
								16.70	6S	24E	11	SE¼ SE¼		J. A. Foster	24.00		.05	
								4.70	6S	24E	12	NW¼ SW¼		T. Hugh Talley	24.00		.05	
								12.90	6S	24E	12	NW¼ SW¼		Tom Talley	95.40		.20	
								2.80	6S	24E	12	NW¼ SW¼		D. V. A. Talley	23.20		.05	
								10.00	6S	24E	12	SW¼ SW¼			77.40		.16	
								10.00	6S	24E	12	SW¼ SW¼		Tom Talley	18.60		.04	
								14.30	6S	24E	12	SE¼ SW¼		D. V. A. Talley	85.60		.18	
											13	NW¼ NW¼			81.00		.17	
														E. D. Howard	93.00		.19	

Party entitled to divert from the stream	Date of priority	Point of diversion				Name of diverting and/or carrying structure	Lands for which right acquired					County	Portion owning said lands when jurisdiction acquired herein	Diversion Right			
		Side of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.				Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.						For irrigation season in sec.-ft.		Maximum rate of diversion in cu. ft. per sec.	
			Twp.	Rge.	Sec.	Subdivision		Twp.	Rge.	Sec.	Subdivision			Individual	Total	Individual	Total
J. L. Henderson	1906	Right	6S	30E	1	NE¼ SE¼	Pumping Plant Direct	4.50	6S	30E	1	NW¼ SE¼	Greenlee	J. L. Henderson		97.00		.06
San Jose Canal Company	1906	Left	6S	27E	28	SW¼ SW¼	San Jose Canal	13.40	7S	26E	29	NE¼ NE¼	Graham	Calvin Hooker		80.40		.17
York Canal Company	1906	Right	6S	31E	7	SW¼ NW¼	York Canal	131.70	Tracts described below:				Greenlee	Ownership data as below:		730.20		1.83
								5.20	6S	31E	8	SW¼ SW¼	"	N. C. Wright	31.20		.07	
								8.20	6S	31E	17	NW¼ NW¼	"	E. Day	68.20		.15	
								10.60	6S	31E	17	NW¼ NW¼	"	W. D. Tucker	63.60		.16	
								.90	6S	31E	17	SW¼ NW¼	"	" " "	4.90		.01	
								8.00	6S	31E	17	SW¼ NW¼	"	" " "	57.60		.12	
								19.40	6S	31E	18	NE¼ NE¼	"	E. Day	116.40		.32	
								16.40	6S	31E	18	NE¼ NE¼	"	W. D. Tucker	98.40		.31	
								4.10	6S	31E	18	NW¼ NE¼	"	E. Day	24.60		.04	
								2.10	6S	31E	18	SE¼ NE¼	"	W. D. Tucker	18.00		.04	
								17.00	6S	31E	19	NE¼ NE¼	"	Ypsilia Camarillo	102.00		.32	
								1.90	6S	31E	19	NW¼ NE¼	"	" "	11.40		.02	
								7.00	6S	31E	19	SW¼ NE¼	"	" "	42.00		.078	
								17.40	6S	31E	19	SE¼ NE¼	"	" "	104.40		.21	
Colmenero Canal Company	1906	Right	6S	31E	11	NW¼ SE¼	Colmenero Canal	26.80	Tracts described below:				Greenlee	Ownership data as below:		157.80		.22
								1.80	7S	31E	18	SW¼ SW¼	"	Theodore H. Moody	11.40		.02	
								23.00	7S	31E	19	SE¼ SW¼	"	" " " "	134.40		.20	
								2.00	7S	31E	14	SW¼ SE¼	"	" " " "	12.00		.02	
Black & McClaskey Canal Company	1906	Left	5S	22E	19	NE¼ SE¼	Black & McClaskey Canal	16.00	Tracts described below:				Greenlee	Ownership data as below:		96.00		.20
								8.60	6S	21E	12	NW¼ NW¼	"	E. F. Cloudt	51.60		.17	
								1.40	6S	21E	14	NE¼ NE¼	"	" " "	14.40		.03	
Valley Canal Company	1906	Right	10S	21W	4	NE¼ NW¼	Valley Canal	104.30	Tracts described below:				Greenlee	Ownership data as below:		631.80		1.31
								23.40	9S	22E	30	NW¼ NW¼	"	Emma Speer, Administratrix of the Estate of J. H. Speer (deceased)	200.40		.41	
								27.20	9S	22E	31	SW¼ NW¼	"		162.20		.34	
								1.20	9S	22E	31	SW¼ NW¼	"		21.60		.03	
								7.40	9S	22E	31	NE¼ SW¼	"	S. A. Foster & W. F. Foster, and J. H. Merrian, Executor of the Estate of Alice E. Day, deceased.	44.40		.09	
								27.20	9S	22E	31	NW¼ SE¼	"		162.20		.34	
								4.70	9S	22E	31	NW¼ SE¼	"		24.20		.05	
Moddie Canal Company	1906	Left	10S	21W	11	NW¼ SE¼	Moddie Canal	46.40	Tracts described below:				Greenlee	Ownership data as below:		272.40		.59
								.20	9S	21E	36	SW¼ SE¼	"	S. A. Foster & W. F. Foster, and J. H. Merrian, Executor of the Estate of Alice E. Day, deceased	1.20		.01	
								22.80	9S	22E	31	NW¼ SW¼	"		133.20		.29	
								1.60	9S	22E	31	SW¼ SW¼	"		23.20		.12	
								14.70	9S	22E	31	SE¼ SW¼	"		85.20		.18	
								5.00	9S	22E	31	NE¼ SW¼	"		30.20		.06	
Nevada Consolidated Copper Company	1906	Right	5S	18E	14	SE¼ SW¼ SW¼ SE¼	Pumps		Use of water for industrial municipal, domestic and related purposes.				Gila	For further definition of this right see Article IX.		918.00		1.91
			5S	18E	23	NE¼ NW¼												

169

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. P. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Nevada Consolidated Copper Company	1908	Left	25	18E	22	NE¼ SW¼	Roving Ditch	23.00	Tracts described below:				Pinal	Ownership data as below:		552.00		1.16
								8.00	25	18E	15	SW¼ SW¼	"	Nevada Consolidated Copper Company	48.00		.10	
								45.00	25	18E	15	S½	"		270.00		.56	
								43.00	25	18E	22	N½ NW¼, W½ NE¼	"		240.00		.50	
United States	1909	Left	45	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal	270.00	Tracts described below:				Pinal	Ownership data as below:		1620.00		2.27
								20.00	50	8E	9	W½ SE¼ NE¼	"	Elizabeth Shannon	120.00		.24	
								25.92	25	8E	9	NW NE¼	"	" "	24.80		.05	
								4.15	25	8E	9	NE¼ NE¼	"		120.00		.24	
								20.00	25	8E	9	N½ NW¼ SW¼	"	Mary L. Shannon	240.00		.50	
								40.00	25	8E	9	S½ NE¼	"	" " "	240.00		.50	
								40.00	25	8E	9	S½ NW¼	"	Charles M. Shannon	60.00		.12	
								10.00	25	8E	9	NE¼ SE¼ NE¼	"	Theresa Hall Brown	60.00		.12	
								10.00	25	8E	9	SE¼ SE¼ NE¼	"	" " "	60.00		.12	
								10.00	25	8E	10	NW¼ SW¼ NE¼ SE¼	"	Charlotte Hall Brown	60.00		.12	
								20.00	25	8E	10	N½ NE¼ SE¼	"	" " "	120.00		.24	
								10.00	25	8E	10	SW¼ SW¼ SE¼ NE¼	"	" " "	60.00		.12	
								80.00	25	8E	29	SW¼ NE¼	"	Lizzie J. Fulton	200.00		.40	
Colvin-Jones Canal Company	1909	Right	45	22E	26	SW¼ SW¼	Colvin-Jones Canal	75.80	Tracts described below:				Graham	Ownership data as below:		452.00		.94
								20.00	45	22E	22	SW¼ SW¼	"	C. N. Higgins	198.00		.38	
								55.80	45	22E	27	NE¼ SE¼	"	Hugh C. Hamman	214.80		.44	
								17.10	45	22E	27	NW¼ NE¼	"	W. F. Bellinger	102.60		.21	
								2.80	45	22E	27	NW¼ SE¼	"	" " "	16.80		.03	
Nevada Consolidated Copper Company	1909	Right	25	18E	14	SE¼ SW¼, SW¼ SE¼	Pumps		Use of water for Industrial, Municipal, Domestic & Related purposes.				Gila	For further definition of this right see Article IX.		19,231.00		22.22
			25	18E	23	NE¼ NW¼												
Smithville Canal Company	1909	Left	25	24E	32	SW¼ NE¼	Smithville Canal	90.80	Tracts described below:				Graham	Ownership data as below:		883.80		1.24
								18.00	25	24E	10	NW¼ SE¼	"	Mrs. Chloe Matthews	90.00		.19	
								6.00	25	24E	10	NW¼ SE¼	"	C. E. Farley	30.00		.07	
								.80	25	24E	10	NE¼ SW¼	"	Mrs. Chloe Matthews	4.80		.01	
								4.15	25	24E	10	SE¼ SW¼	"	" " "	24.80		.05	
								17.85	25	24E	10	SW¼ SE¼	"		106.80		.22	
								23.35	25	24E	10	SE¼ SE¼	"	Ephriam Larsen	139.80		.29	
								16.30	25	24E	11	SE¼ SW¼	"	E. L. Smith	106.80		.22	
								6.70	25	24E	11	SW¼ SW¼	"	Earl Larsen	34.20		.07	
								1.30	25	24E	11	SE¼ SW¼	"	Ephriam Larsen	7.80		.02	
								7.30	25	24E	15	NE¼ NE¼	"	" "	43.00		.09	
Fort Thomas Consolidated Canal Company	1909-	Left	25	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	77.00	Tracts described below:				Graham	Ownership data as below:		462.00		.97
								2.30	25	23E	18	NE¼ NW¼	"	Mrs. Henry Dial	18.80		.02	
								17.20	25	23E	22	NW¼ SW¼	"	Edgar H. Cheeley	102.80		.22	
								3.80	25	23E	22	SW¼ SW¼	"	" " "	22.80		.05	
								5.70	25	23E	22	SE¼ NW¼	"	Mrs. S. J. Hunter	37.20		.08	
								12.30	25	23E	11	SW¼ NE¼	"	George W. Healy	78.80		.16	
								34.10	25	23E	11	SE¼ SE¼	"	W. H. Roach	210.80		.44	

170

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
San Jose Canal Company	1907	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	70.00	Tracts described below:				Graham	Ownership data as below:		430.00		.87
								23.60	7S	26E	22	NW¼ NE¼		George Albert Morris	171.60		.36	
								30.40	7S	26E	23	NE¼ NW¼		Frank Morris	182.45		.38	
								6.00	7S	27E	24	NE¼ NE¼		Nora Floyd	32.00		.06	
								6.00	7S	27E	25	NE¼ NE¼		Etta G. Deller	36.00		.07	
Union Canal Company	1909	Left	7S	27E	18	SE¼ NW¼	Union Canal	5.80	6S	26E	25	SE¼ NW¼	Graham	Harriett Pulsipher		34.80		.07
York Cattle Company	1909	Left	6S	21E	19	SW¼ SE¼	Pumping Plant Direct	44.80	Tracts described below:				Greenlee	Ownership data as below:		373.00		.67
								3.20	6S	21E	18	NE¼ SE¼		York Cattle Company	21.00		.04	
								8.00	6S	21E	18	NW¼ SE¼		" " " "	48.00		.10	
								.00	6S	21E	18	SW¼ SE¼		" " " "	.40		.01	
								8.32	6S	21E	18	SW¼ SE¼		" " " "	54.80		.12	
								17.40	6S	21E	19	NW¼ NE¼		" " " "	104.40		.22	
								1.40	6S	21E	19	SE¼ NE¼		" " " "	8.40		.03	
								8.00	6S	21E	19	SW¼ NE¼		" " " "	32.00		.08	
F. B. Rose	1909	Right	6S	21E	19	NW¼ NE¼	Pumping Plant Direct	11.60	6S	21E	19	SW¼ SE¼	Greenlee	F. B. Rose		46.80		.15
W. C. Crawford	1909	Right	6S	21E	22	SW¼ SE¼	Pumping Plant Direct	33.00	Tracts described below:				Greenlee	Ownership data as below:		198.00		.42
								18.40	6S	21E	23	NW¼ SE¼		W. C. Crawford	92.40		.21	
								14.20	6S	21E	23	SW¼ SE¼		" " "	87.20		.20	
								.40	6S	21E	23	SE¼ SE¼		" " "	1.40		.01	
Billingsley Extension Canal Company	1909	Right	7S	21E	18	NE¼ NW¼	Billingsley Extension Canal	14.00	Tracts described below:				Greenlee	Ownership data as below:		84.00		.18
								1.90	7S	21E	4	NW¼ SW¼		W. C. Crawford	11.40		.02	
								12.10	7S	21E	4	SW¼ NW¼		" " "	72.60		.16	
United States	1910	Left	4S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence Casa Grande Canal	132.00	Tracts described below:				Pinal	Ownership data as below:		732.00		1.65
								15.00	4S	9E	35	W½ SW¼		George W. Smith	90.00		.19	
								34.00	4S	10E	21	SW¼ SW¼		Harry True	204.00		.43	
								3.00	4S	10E	31	SW¼ SW¼ SW¼		Mary A. Antenell	18.00		.04	
								80.00	5S	9E	34	W½ NE¼		L. H. Nafziger	480.00		1.00	
Colvin-Jones Canal Company	1910	Right	6S	22E	26	SW¼ NW¼	Colvin-Jones Canal	17.30	4S	28E	27	NE¼ NW¼	Graham	George W. Healy		108.00		.22
Dodge-Nevada Canal Company	1910	Left	6S	25E	20	NE¼ NW¼	Dodge-Nevada Canal	13.60	5S	24E	30	SW¼ SE¼	Graham	L. A. Adams		83.60		.13
Smithville Canal Company	1910	Left	6S	25E	28	SW¼ NE¼	Smithville Canal	484.00	Tracts described below:				Graham	Ownership data as below:		2905.00		6.04
								22.90	5S	24E	31	NE¼ SW¼		Edward Heaney	137.40		.26	
								2.20	5S	24E	31	NW¼ SW¼		" "	13.20		.02	
								21.20	5S	24E	31	SW¼ SW¼		J. H. Mask	127.20		.27	
								34.10	5S	24E	31	SE¼ SW¼		" "	210.60		.44	
								36.20	5S	24E	6	SW¼ SW¼		Benjamin Echols	217.80		.45	
								14.00	6S	24E	6	SE¼ SW¼		Lewis Allen	84.00		.13	

(continued)

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in sec.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Smithville Canal Company (continuation)	1910											(continuation)						
								20.00	6S	24E	2	SW¼ SE¼	Graham	P. A. Norton	122.00		.29	
								20.00	6S	24E	11	SE¼ SE¼	"	F. H. Taylor	132.00		.32	
								37.00	6S	24E	1	NE¼ NE¼	"	H. J. Anderson	228.00		.47	
								5.40	6S	24E	6	NW¼ NE¼	"	" " "	51.00		.11	
								14.00	6S	24E	6	NW¼ NW¼	"		97.20		.20	
								16.20	6S	24E	10	SW¼ NE¼	"	Ben Bixby	115.20		.24	
								24.80	6S	24E	10	NW¼ NW¼	"	"	278.80		.48	
								21.70	6S	24E	8	SW¼ NW¼	"	Milton Lisse	193.20		.40	
								14.00	6S	24E	8	SE¼ NW¼	"	H. J. Anderson	84.00		.18	
								11.00	6S	24E	8	NE¼ SW¼	"	" " "	66.00		.14	
								22.20	6S	24E	8	NW¼ SW¼	"	" " "	133.20		.28	
								23.10	6S	24E	8	NE¼ NW¼	"	Lewis Allen	138.60		.29	
								12.00	6S	24E	8	SW¼ SW¼	"	H. J. Anderson	72.00		.15	
								.10	6S	24E	8	SE¼ SW¼	"	" " "	.60		.01	
								20.50	6S	24E	18	NE¼ NW¼	"	Benjamin Eshols	123.00		.26	
								27.70	6S	24E	18	NW¼ NW¼	"	" " "	166.20		.35	
								7.80	6S	24E	18	SW¼ NW¼	"	" " "	46.80		.10	
								12.00	6S	24E	18	SE¼ NW¼	"	" " "	72.00		.15	
								11.50	6S	24E	18	NE¼ SW¼	"	" " "	69.00		.14	
Fort Thomas Consolidated Canal Company	1910	Left	6S	24E	9	NE¼ NW¼	Fort Thomas Consolidated Canal	42.70	Tracts described below:				Graham	Ownership data as below:		238.20		.42
								33.20	5S	23E	34	NE¼ NE¼	"	Charles F. Solomon	104.80		.45	
								12.20	5S	23E	35	SE¼ NE¼	"	" " "	73.20		.18	
								4.20	5S	23E	26	SE¼ NE¼	"	School District #7, County of Graham, State of Arizona	21.20		.06	
Curtis Canal Company	1910	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	10.00	Tracts described below:				Graham	Ownership data as below:		60.00		.13
								.50	5S	24E	2	NE¼ NE¼	"	Jesse A. Hancock	2.20		.01	
								4.40	6S	24E	2	SE¼ NE¼	"	" " "	52.40		.12	
J. H. Brown	1910	Left	6S	31E	8	SW¼ SW¼	Pumping Plant Direct	25.00	Tracts described below:				Greenlee	Ownership data as below:		153.00		.93
								6.80	6S	31E	17	SW¼ SE¼	"	J. H. Brown	40.80		.88	
								14.80	6S	31E	17	SE¼ SE¼	"	" " "	88.80		.21	
								3.40	6S	31E	8	SW¼ SW¼	"	" " "	13.40		.03	
Sexton Canal Company	9110	Left	7S	31E	21	SW¼ SE¼	Sexton Canal	9.50	Tracts described below:				Greenlee	Ownership data as below:		57.00		.12
								2.10	7S	31E	16	SW¼ SW¼	"	Wyatt White	12.60		.03	
								1.00	7S	31E	16	SE¼ SW¼	"	" " "	6.00		.01	
								5.20	7S	31E	21	NE¼ NW¼	"	" " "	31.20		.07	
								1.10	7S	31E	21	NW¼ NW¼	"	" " "	6.60		.01	
Duncan Canal Company	1910	Left	8S	32E	28	NE¼ SW¼	Duncan Canal	4.00	Tracts described below:				Greenlee	Ownership data as below:		34.00		.09
								1.20	8S	32E	19	NW¼ NE¼	"	Mrs. E. M. Simmons	7.20		.02	
								.50	8S	32E	19	SW¼ NE¼	"	" " "	3.00		.01	
								1.80	8S	32E	19	NE¼ NW¼	"	" " "	10.80		.02	
								.40	8S	32E	19	SE¼ NW¼	"	" " "	2.40		.01	
York Canal Company	1910	Right	6S	31E	30	SW¼ NW¼	York Canal	6.35	Tracts described below:				Greenlee	Ownership data as below:		37.80		.07
								1.10	6S	31E	7	SE¼ NE¼	"	Richard Kirtland	6.60		.01	
								.80	6S	31E	7	NE¼ SE¼	"	" " "	4.80		.01	
								2.50	6S	31E	8	SW¼ NW¼	"	" " "	14.40		.03	
								1.80	6S	31E	8	NW¼ SW¼	"	" " "	10.80		.02	

Party entitled to divert from the stream	Date of priority	Point of diversion					Name of diverting and/or carrying structure	Lands for which right acquired						Parties owning said lands over jurisdiction acquired herein	Diversion right			
		Side of stream	Location Referred to G. & S. R. B. & M. or N. M. P. & M.					Number of acres	Description Referred to G. & S. R. B. & M. or N. M. P. & M.				County		For irrigation season in cu. ft.		Maximum rate of diversion in cu. ft. per sec.	
			Twp.	Rge.	Sec.	Subdivision			Twp.	Rge.	Sec.	Subdivision			Individual	Total	Individual	Total
Meddle Canal Company	1910	Left	18S	21W	11	NW¼ SE¼	Meddle Canal	13.00	8S	22E	34	SW¼ SE¼	Greenlee	R. C. Moore		72.00		.18
United States	1911	Left	6S	11E	5	NW¼	Ashurst-Hayden Diversion Dam & Florence Coon Grande Canal	100.00	8S	9E	19	SE¼	Pinal	Mark Twain Clemens		900.00		2.00
Fort Thomas Consolidated Canal Company	1911	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	23.00	Tracts described below:				Graham	Ownership data as below:		168.00		.41
								27.40	4S	23E	28	SW¼ NE¼	"	Leslie Montierth &				
								6.60	4S	22E	29	SE¼ NE¼	"	Wendell Montierth	104.40		.34	
														George W. Healy	33.60		.07	
San Jose Canal Company	1911	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	46.80	Tracts described below:				Graham	Ownership data as below:		280.80		.69
								26.80	7S	26E	21	SW¼ SW¼	"	Oscar Olsen	180.80		.54	
								20.00	7S	26E	28	SE¼ SW¼	"	" "	120.00		.25	
Cooper & Windham Extension Canal Company, Under Contract whereby Cooper & Windham Canal Company makes actual diversion.	1911	Right	18S	21W	11	NW¼ SE¼	Cooper & Windham Canal & Cooper & Windham Extension Canal.	73.40	Tracts described below:				Greenlee	Ownership data as below:		440.40		.92
								23.80	7S	31E	8	SE¼ NE¼	"	H. F. Billingsley	104.80		.22	
								14.80	8S	22E	23	NE¼ NE¼	"	" " "	88.40		.28	
								31.40	8S	23E	29	SE¼ NE¼	"	" " "	142.40		.32	
								4.30	8S	23E	28	NE¼ SE¼	"	" " "	28.80		.04	
								2.00	8S	22E	27	NW¼ SW¼	"	School District #27, County of Greenlee, State of Arizona.	12.00		.03	
United States	1912	Left	4S	11E	5	NW¼	Ashurst-Hayden Diversion Dam & Florence Coon Grande Canal	140.00	Tracts described below:				Pinal	Ownership data as below:		840.00		1.75
								60.00	8S	9E	1	NW¼ SW¼	"	Chiaro S. Shiffet	360.00		.75	
								80.00	8S	9E	30	W½ NW¼	"	East C. Clemens	480.00		1.00	
Calvin-Jones Canal Company	1913	Right	6S	28E	20	SW¼ SW¼	Calvin-Jones Canal	15.80	Tracts described below:				Graham	Ownership data as below:		98.00		.21
								1.60	6S	28E	21	SW¼ NE¼	"	C. N. Higgins	9.60		.02	
								4.80	6S	28E	21	SE¼ NE¼	"	" " "	28.80		.06	
								10.10	6S	28E	21	NE¼ SE¼	"	" " "	60.60		.13	
Fort Thomas Consolidated Canal Company	1913	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	24.90	Tracts described below:				Graham	Ownership data as below:		172.40		.36
								2.10	6S	23E	17	SE¼ SW¼	"	E. W. Bleak	36.60		.08	
								22.80	6S	23E	22	NW¼ NW¼	"	Alonzo Wiser	134.80		.28	
Graham Canal Company	1913	Right	7S	26E	9	NE¼ NW¼	Graham Canal	802.70	Tracts described below:				Graham	Ownership data as below:		1616.20		3.75
								28.80	6S	24E	1	SE¼ SE¼	"	John L. Hoopes	171.00		.36	
								15.00	6S	24E	12	NE¼ NW¼	"	Wilfred Peterson	90.00		.19	
								12.70	6S	24E	12	NW¼ NW¼	"	D. E. Adams	72.20		.15	
								23.00	6S	26E	6	SW¼ SW¼	"	John L. Hoopes	172.00		.45	
								1.60	6S	26E	7	NE¼ NW¼	"	" " "	9.00		.02	
								20.00	6S	25E	7	NW¼ NW¼	"	" " "	120.00		.28	
								12.70	6S	26E	7	SE¼ NW¼	"	Bell Hampton, Administratrix of the Estate of A. N. Bryce, deceased	76.20		.16	

(continued)

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
												(continued)						
Graham Canal Company (continued)	1913							8.00	25S	27E	7	SE¼ SE¼	"	John W. Mallios	39.60		.18	
								7.00	25S	28E	8	NW¼ SW¼	"	John C. Cooper	37.40		.18	
								8.00	25S	28E	8	NW¼ SW¼	"	J. F. Walker	34.00		.17	
								14.70	25S	28E	8	SW¼ SW¼	"	" " "	70.70		.14	
								8.00	25S	28E	8	SE¼ SE¼	"	William F. Bryce	32.00		.11	
								8.00	25S	28E	18	SW¼ SW¼	"	J. R. Moore	31.60		.09	
								34.80	25S	28E	18	NW¼ NW¼	"	R. M. Norton	140.40		.31	
								8.80	25S	28E	18	SW¼ NW¼	"	J. E. Chesley	38.00		.12	
								14.40	25S	28E	18	SW¼ NW¼	"	Mrs. A. W. Chesley	56.40		.18	
								7.40	25S	28E	18	NE¼ SW¼	"	A. J. Dodge	44.40		.26	
								17.10	25S	28E	18	NW¼ SW¼	"	William Wamsley	102.60		.23	
								22.80	25S	28E	17	SE¼ NE¼	"	Mrs. A. W. Chesley	133.80		.37	
								23.20	25S	28E	17	NE¼ SE¼	"	J. L. Fouts	143.20		.32	
								11.00	25S	28E	17	NW¼ SE¼	"	" " "	67.20		.15	
								4.10	25S	28E	18	NW¼ NE¼	"	G. A. Byrne	24.60		.06	
								8.00	25S	28E	31	NE¼ NE¼	"	Mattie Wamsley	38.00		.04	
Union Canal Company	1912	Left	7S	27E	18	SE¼ NW¼	Union Canal	198.00	Tracts described below:				Graham	Ownership data as below:		723.00		1.10
								7.00	25S	28E	14	NW¼ SE¼	"	Mrs. Sarah Bryce	42.00		.08	
								34.00	25S	28E	14	SW¼ SE¼	"	" " "	204.00		.41	
								18.00	25S	28E	14	SE¼ SE¼	"	" " "	108.00		.22	
								10.00	24S	28E	23	NE¼ NE¼	"	J. A. Mask	60.00		.12	
								2.00	24S	28E	23	NW¼ NE¼	"	" " "	12.00		.02	
								24.80	24S	28E	23	SE¼ NE¼	"	" " "	148.80		.31	
								18.80	24S	28E	24	SE¼ SE¼	"	E. C. Eyring	112.80		.24	
								4.80	24S	28E	30	NE¼ NE¼	"	" " "	27.00		.06	
Duncan Canal Company	1913	Left	8S	22E	28	NE¼ SW¼	Duncan Canal	9.30	8S	22E	29	SE¼ NE¼	Greenlee	G. W. Collins		55.80		.12
Black & McClinkey Canal Company	1913	Left	8S	22E	19	NE¼ SE¼	Black & McClinkey Canal	4.00	8S	31E	13	NE¼ NW¼	Greenlee	J. F. McGrath		24.00		.05
United States	1913	Left	4S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal.	1913.00	Tracts described below:				Pinal	Ownership data as below:		7260.00		15.13
								99.00	4S	10E	27	S½ SW¼	"	J. L. Mills	480.00		1.00	
								74.00	4S	10E	22	S½ SW¼ SW¼	"	Olive J. O'Connor & Jeanne W. O'Connor	120.00		.25	
								78.00	4S	10E	22	N½ NW¼	"	J. L. Mills	420.00		.87	
								48.00	4S	9E	25	S½ NW¼	"	Ed Levy & Hazel A. Converse	480.00		1.00	
								156.00	4S	9E	19	NE¼	"	W. J. Clemans, Jr.	960.00		2.00	
								156.00	4S	9E	19	SW¼	"	Wilmerine W. Clemans	960.00		2.00	
								80.00	4S	9E	19	E½ NW¼	"	Lillian C. Merchant	480.00		1.00	
								154.40	4S	9E	29	SW¼	"	F. P. Jamieson	632.70		1.84	
								8.80	4S	9E	29	SW¼	"	United States	37.20		.08	
								156.00	4S	9E	32	SE¼	"	J. J. Fraser	960.00		2.00	
								154.40	4S	9E	31	NE¼	"	Ivey Marshall	632.70		1.84	
								4.80	4S	9E	31	NE¼	"	United States	37.20		.08	
								80.00	4S	9E	9	S½ SW¼	"	C. D. Pendley	480.00		1.00	
Maddie Canal Company	1913	Left	19S	21W	11	NW¼ SE¼	Maddie Canal	7.80	Tracts described below:				Greenlee	Ownership/data as below:		44.80		.09
								6.80	19S	22E	29	SE¼ NW¼	"	Oscar Bainville	38.60		.07	
								.72	19S	22E	29	SW¼ NW¼	"	" "	4.20		.01	
								.32	19S	22E	29	NE¼ SW¼	"	" "	1.20		.01	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Calvin-Jones Canal Company	1913	Right	4S	23E	28	SW¼ SW¼	Calvin-Jones Canal	31.80	Tracts described below:				Graham	Ownership data as below:		130.80		.37
								12.80	4S	23E	21	SW¼ NE¼	"	C. N. Higgins	74.00		.18	
								7.80	4S	23E	21	SE¼ NW¼	"	" " "	43.80		.09	
								2.00	4S	23E	21	NW¼ SE¼	"	" " "	12.00		.02	
Fort Thomas Consolidated Canal Company	1913	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	35.20	Tracts described below:				Graham	Ownership data as below:		211.20		.44
								12.70	4S	23E	18	NE¼ SE¼	"	Norman J. Gibson	74.20		.15	
								8.00	4S	23E	18	NW¼ SE¼	"	" " "	46.80		.10	
								7.90	4S	23E	18	SW¼ SE¼	"	E. W. Black	47.40		.10	
								1.40	4S	23E	33	NW¼ SW¼	"	W. O. Tuttle	8.40		.02	
								5.20	4S	23E	33	SW¼ SW¼	"	" " "	31.20		.06	
Dodge-Nevada Canal Company	1913	Left	6S	23E	20	NE¼ NW¼	Dodge-Nevada Canal	481.40	Tracts described below:				Graham	Ownership data as below:		3488.00		7.27
								37.00	6S	23E	14	SW¼ NE¼	"	E. P. Byers	222.00		.46	
								37.00	6S	23E	14	NW¼ SE¼	"	Carrie E. Yett & E. D. Hennebolder	222.00		.46	
								36.20	6S	23E	14	SW¼ SE¼	"	Sam Henry	276.20		.48	
								24.80	6S	23E	23	SW¼ NE¼	"	E. M. Plumb	148.80		.31	
								22.35	6S	23E	23	SE¼ NE¼	"	" " "	102.85		.40	
								28.60	6S	23E	24	NE¼ SW¼	"	John Carpenter	232.60		.48	
								22.20	6S	23E	24	NW¼ SW¼	"	" " "	133.20		.42	
								32.20	6S	23E	24	SW¼ SW¼	"	" " "	198.20		.43	
								38.10	6S	23E	24	SE¼ SW¼	"	" " "	234.60		.49	
								8.10	6S	23E	26	SW¼ SE¼	"	Nels J. Rasmussen	48.60		.10	
								37.70	6S	23E	26	SE¼ SE¼	"	" " "	221.20		.47	
								20	6S	23E	28	NE¼ NE¼	"	George A. Mathews	4.80		.01	
								22.60	6S	23E	28	NW¼ NW¼	"	Ann Fowler	141.60		.30	
								8.00	6S	23E	28	SW¼ NE¼	"	George A. Mathews	48.40		.10	
								24.00	6S	23E	28	SW¼ NW¼	"	George Clyde Mathews	148.40		.31	
								16.70	6S	23E	28	SE¼ NE¼	"	" " "	100.20		.21	
								18.70	6S	23E	28	SE¼ NE¼	"	George A. Mathews	118.20		.25	
								31.40	6S	24E	30	NW¼ NW¼	"	Ann Fowler	188.40		.39	
								39.20	6S	24E	30	SW¼ NW¼	"	George A. Mathews	234.80		.49	
								35.90	6S	24E	30	SE¼ SW¼	"	L. A. Adams	221.40		.46	
								21.40	6S	24E	31	NE¼ NW¼	"	Mrs. J. E. Cluff	128.40		.27	
Smithville Canal Company	1913	Left	6S	23E	36	SW¼ NE¼	Smithville Canal	8.40	Tract described below:				Graham	Ownership data as below:		80.40		.19
								1.80	6S	24E	9	NW¼ SE¼	"	William G. Mac	10.80		.02	
								2.40	6S	24E	9	NE¼ NE¼	"	" " "	14.40		.03	
								4.20	6S	24E	9	SE¼ NE¼	"	" " "	25.20		.05	
United States	1914	Left	4S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence Coolidge Canal.	827.00	Tracts described below:				Final	Ownership data as below:		4963.00		10.34
								160.00	4S	9E	34	NE¼ & NW¼ SE¼	"	Willis E. Pearson	998.00		2.00	
								40.00	4S	9E	21	SE¼ SE¼	"	Isaac H. Conrad	248.00		.50	
								20.00	4S	9E	21	SW¼ NE¼ SE¼	"	" " "	124.00		.25	
								160.00	4S	9E	23	SE¼	"	F. A. Urban	960.00		2.00	
								12.00	4S	9E	1	E½ NE¼ NW¼	"	Grant W. McFarland	72.00		.15	
								25.00	4S	9E	11	NW¼ NE¼	"	Donald Stewart	150.00		.31	
								160.00	4S	9E	32	NW¼	"	J. C. Jamieson	960.00		1.86	
								80.00	6S	8E	29	SE¼ SW¼	"	Amadeo F. Peters, Jr. and Marie C. Peters	180.00		.37	
								160.00	6S	8E	1	Lots 2 & 10 S½ NE¼	"	Zethar A. Brashway	990.00		2.00	
								72.00	6S	9E	6	Lots 3, 3 & 4	"	David J. Little	430.00		.89	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Portion owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in cu.ft. per sec.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Curtis Canal Company	1914	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	1.40	6S	24E	2S	NW¼ NW¼	Graham	J. D. Busby		8.40		.09
Fort Thomas Consolidated Canal Company	1914	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal.	73.72	Tracts described below:				Graham	Ownership data as below:		443.20		.93
								4.88	6S	23E	35	NE¼ NW¼	"	William C. Tyler	27.00		.06	
								8	6S	23E	34	NW¼ NW¼	"	Table Rascia	4.00		.01	
								1.72	6S	23E	34	SW¼ NW¼	"	L. J. Brown, Jr.	16.00		.04	
								1.72	6S	23E	34	NW¼ SW¼	"	Mrs. Clara Blaine	5.00		.01	
								31.60	6S	23E	34	SW¼ SW¼	"	A. A. Smith	15.00		.03	
								7.10	6S	23E	33	NE¼ SW¼	"	L. J. Brown, Jr.	185.00		.39	
								24.10	6S	24E	25	NW¼ SE¼	"	Jesse Tyler	42.80		.09	
									6S	24E	19	SW¼ NW¼	"	Charles M. Layton	144.80		.30	
Dodge-Nevada Canal Company	1914	Left	6S	24E	25	NW¼ NW¼	Dodge-Nevada Canal	97.80	Tracts described below:				Graham	Ownership data as below:		406.80		.86
								14.10	6S	23E	13	NE¼ SW¼	"	W. H. Roach	98.60		.20	
								88.90	6S	23E	23	NW¼ NE¼	"	Sam Emery	231.40		.48	
								2.20	6S	23E	24	NE¼ NW¼	"	A. E. Wasch	77.40		.16	
								13.30	6S	24E	19	SE¼ NW¼	"	" " "	1.20		.01	
Graham Canal Company	1914	Right	7S	25E	9	NE¼ NW¼	Graham Canal	94.60	Tracts described below:									.18
								6.10	6S	24E	2	NE¼ SW¼	Graham	Ownership data as below:		847.80		1.19
								6.70	6S	24E	2	SE¼ SW¼	"	Joseph Moyse	24.60		.05	
								85.80	6S	24E	2	SW¼ SE¼	"	" "	92.20		.19	
								8.10	6S	24E	11	SE¼ SW¼	"	Leslie W. Layton & Reb Inez	301.60		.62	
								1.20	6S	24E	12	NE¼ SE¼	"	A. O. Lamoreaux, Jr.	68.80		.14	
								1.20	6S	24E	12	NW¼ SE¼	"	Wilfred Petersen	8.40		.02	
								38.70	6S	24E	12	SW¼ SE¼	"	" "	7.80		.02	
									6S	24E	13	NE¼ NE¼	"	George Sanders	52.80		.11	
Union Canal Company	1914	Left	7S	24E	18	SE¼ NW¼	Union Canal						"	Wilfred Petersen	172.20		.36	
Albert Canal Company	1914						Albert Canal	12.80	6S	24E	36	NW¼ NW¼	Graham	F. H. Tuple		152.00		.31
Valley Canal Company	1914	Right	10S	21W	4	NE¼ NW¼	Valley Canal	8.80	Tracts described below:				Greenlee	Ownership data as below:		53.60		.11
								5.80	3S	31E	31	SE¼ NW¼	"	H. Albert & W. Bainbridge	37.80		.08	
								2.80	3S	31E	31	NE¼ SW¼	"	" "	15.80		.03	
								43.40	Tracts described below:				Greenlee	Ownership data as below:		261.60		.55
								2.80	3S	31E	11	SW¼ NE¼	"	J. L. T. Wallace	33.40		.08	
								7.80	3S	31E	12	NW¼ NW¼	"	" " " "	45.20		.10	
								2.20	3S	31E	12	NE¼ NW¼	"	" " " "	31.20		.07	
								2.20	3S	31E	12	NW¼ SE¼	"	W. V. McCarty	40.20		.09	
								2.80	3S	31E	12	SE¼ NW¼	"	" " "	64.20		.13	
								25.40	3S	31E	12	NW¼ SW¼	"	" " "	83.40		.18	
Curtis Canal Company	1914	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	23.10	Tracts described below:									
								10.00	6S	24E	1	NE¼ NW¼	Graham	Ownership data as below:		132.80		.28
								8.10	6S	24E	1	SE¼ NW¼	"	C. E. Ferris	58.00		.13	
								2.20	6S	24E	1	NE¼ SW¼	"	R. O. Raper	61.40		.13	
													"	" "	10.20		.04	
Smithville Canal Company	1915	Left	6S	23E	36	SE¼ NE¼	Smithville Canal	134.80	Tracts described below:									
								14.90	6S	24E	6	SW¼ NE¼	Graham	Ownership data as below:		1108.80		2.31
								10.00	6S	24E	6	NE¼ SW¼	"	C. J. McElroy	85.40		.20	
								32.60	6S	24E	6	NW¼ SW¼	"	Mrs. Frank Curtis	60.80		.13	
								24.10	6S	24E	6	NE¼ SW¼	"	C. J. McElroy	354.40		.74	
								18.00	6S	24E	6	SE¼ SW¼	"	A. O. Mask	186.80		.39	
													"	A. O. Mask	106.80		.22	

(continued)

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
												(continuation)						
Smithville Canal Company (continuation)	1918							58.20	6S	24E	6	NW¼ NE¼	Graham	Henry H. Mack	236.80		.49	
								1.10	6S	24E	6	SW¼ NE¼	"	" " "	4.60		.01	
								8.30	6S	24E	6	NE¼ NW¼	"	" " "	34.80		.07	
								37.70	6S	24E	6	NE¼ NE¼	"	A. G. Mack	225.20		.47	
Fort Thomas Consolidated Canal Company	1918	Left	6S	24E	9	NW¼ NW¼	Fort Thomas Consolidated Canal	23.90	Tracts described below:				Graham	Ownership data as below:		223.40		.67
								4.80	6S	23E	20	NW¼ NW¼	"	C. N. Rose	23.00		.07	
								14.20	6S	23E	29	SW¼ NW¼	"	" " "	91.20		.19	
								4.30	6S	23E	2	NW¼ SE¼	"	H. L. Colvin	19.80		.16	
								5.10	6S	23E	2	NW¼ SE¼	"	L. W. Smith	53.40		.11	
								6.80	6S	23E	12	SE¼ NE¼	"	William Wemmlee & Charles Wemmlee	31.90		.08	
								9.40	6S	23E	13	SE¼ SW¼	"	M. D. Maloy	54.40		.13	
Dodge-Nevada Canal Company	1918	Left	6S	25E	20	NE¼ NW¼	Dodge-Nevada Canal	196.80	Tracts described below:				Graham	Ownership data as below:		1197.90		2.49
								4.10	6S	23E	18	SE¼ SW¼	"	M. D. Maloy	38.80		.08	
								22.00	6S	23E	14	NE¼ NW¼	"	W. H. Roach	138.00		.29	
								20.60	6S	23E	14	SE¼ NW¼	"	C. J. Maish	123.60		.24	
								21.40	6S	23E	14	NE¼ SW¼	"	" " "	186.40		.37	
								32.00	6S	23E	14	SE¼ SW¼	"	Sam Henry	210.00		.42	
								4.00	6S	23E	24	SW¼ NW¼	"	E. B. Nallon	20.00		.04	
								12.70	6S	23E	24	NE¼ NW¼	"	E. D. Plumb	118.30		.24	
								20.40	6S	23E	29	SE¼ SE¼	"	Charles P. Johns	183.40		.38	
								31.40	6S	24E	30	SW¼ SW¼	"	L. A. Adams	235.40		.48	
Graham Canal Company	1918	Right	7S	25E	9	NE¼ NW¼	Graham Canal	31.00	Tracts described below:				Graham	Ownership data as below:		188.00		.38
								6.80	6S	24E	1	SW¼ NE¼	"	Heber B. Bryan	39.00		.08	
								34.80	6S	24E	18	SE¼ SE¼	"	W. F. Butler, Jr.	147.00		.30	
San Jose Canal Company	1918	Left	6S	27E	36	SW¼ SW¼	San Jose Canal	22.00	Tracts described below:				Graham	Ownership data as below:		192.80		.40
								4.90	7S	26E	25	SW¼ NE¼	"	Braulio Cabeza	33.40		.06	
								12.70	7S	26E	25	SE¼ NE¼	"	Petra Fresco	83.20		.17	
								1.70	7S	27E	30	SW¼ NW¼	"	Emery Adelbert Curtis	10.20		.02	
								4.80	7S	27E	30	SE¼ NW¼	"	" " "	37.80		.08	
								2.00	7S	27E	30	NE¼ SW¼	"	" " "	15.00		.04	
								3.40	7S	27E	30	NW¼ SW¼	"	" " "	23.40		.04	
Colmenero Canal Company	1918	Right	8S	31E	11	NW¼ SW¼	Colmenero Canal	1.40	8S	31E	4	NE¼ NE¼	Grenzlo	Charles Tallo		8.40		.02
Valley Canal Company	1918	Right	19S	21W	4	NE¼ NW¼	Valley Canal	30.90	Tracts described below:				Grenzlo	Ownership data as below:		185.40		.38
								16.00	8S	31E	13	SE¼ SE¼	"	C. J. Elmer	96.00		.18	
								14.40	8S	32E	20	SE¼ SE¼	"	H. J. Nunn & T. A. Nunn	86.40		.17	
								2.50	8S	32E	19	NE¼ NE¼	"	Allen H. Cooper	14.00		.03	
United States	1918	Both	4S	11E	8	NW¼	Ashurst-Hayden Diversion Dam & Florence-Casa Grande Canal and Sheaton Diversion Dam.	63,000	Lands of Florence-Casa Grande Project				Final	For full statement of this Right see Article VI (E)		373,000		775.00
			4S	6E	12	SE¼												

177

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to B. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. D. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Nevada Consolidated Copper Company	1916	Left	15	25E	16	SE¼ SE¼	Vana Ditch	70.00	Tracts described below:				Pinal	Ownership data as below:		420.00		.82
								10.00	15	25E	7	SW¼ SE¼	"	Nevada Consolidated	82.00		.12	
								30.00	15	25E	8	SW¼ SW¼	"	Copper Company	150.00		.28	
								30.00	15	25E	17	NW¼ NE¼, NE¼ NW¼	"		190.00		.32	
Fort Thomas Consolidated Canal Company	1916	Left	6	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	42.00	Tracts described below:				Graham	Ownership data as below:		263.00		.49
								2.00	4	23E	19	SE¼ NE¼	"	J. N. Holycak	16.00		.04	
								30.00	5	24E	19	NW¼ NW¼	"	M. F. Tryon	234.00		.42	
Dodge-Nevada Canal Company	1916	Left	6	25E	22	NE¼ NW¼	Dodge-Nevada Canal	74.25	Tracts described below:				Graham	Ownership data as below:		445.50		.93
								31.00	5	24E	36	NE¼ SW¼	"	Dan Young	180.60		.38	
								43.00	6	24E	25	NW¼ SW¼	"	L. A. Adams	240.00		.50	
								2.10	5	24E	25	SE¼ SW¼	"	Dan Young	16.00		.02	
								.75	6	24E	25	SW¼ SE¼	"	" "	1.20		.01	
Graham Canal Company	1916	Right	7	26E	9	NE¼ NW¼	Graham Canal	19.00	Tracts described below:				Graham	Ownership data as below:		114.00		.24
								15.00	6	26E	33	SW¼ NW¼	"	Joseph Howard & J. M. Howard	75.00		.16	
								4.00	6	25E	31	SE¼ NW¼	"	" " "	39.00		.08	
Union Canal Company	1916	Left	7	27E	18	SE¼ NW¼	Union Canal	10.00	6	25E	34	SW¼ NW¼	Graham	L. S. Brasen		60.00		.12
Cooper & Windham Extension Canal Company. Under contract whereby Cooper & Windham Ditch makes actual diversion.	1916	Right	18	21W	11	NW¼ SE¼	Cooper & Windham Ditch & Cooper & Windham Extension canal.	28.50	Tracts described below:				Greenlee	Ownership data as below:		172.50		.36
								20.10	6	32E	21	SE¼ SW¼	"	J. C. Burleson	120.60		.25	
								8.70	5	32E	31	SW¼ SE¼	"	" "	52.90		.11	
C. C. Hester	1916	Left	6	31E	19	SW¼ SE¼	Pumping Plant Diver.	4.20	Tracts described below:				Greenlee	Ownership data as below:		98.80		.01
								2.60	6	31E	19	NW¼ NE¼	"	C. C. Hester	31.00		.06	
								.80	6	31E	19	SW¼ SE¼	"	" "	4.80		.01	
Union Canal Company	1917	Left	7	27E	18	SE¼ NW¼	Union Canal	31.00	Tracts described below:				Graham	Ownership data as below:		189.00		.40
								2.00	6	24E	19	SE¼ SW¼	"	H. O. Boyle	12.00		.02	
								10.10	6	25E	13	SW¼ NE¼	"	P. M. Hinkley	60.60		.13	
								14.90	6	24E	23	NE¼ NW¼	"	H. O. Boyle	106.00		.22	
								1.00	6	24E	24	SW¼ NW¼	"	C. H. Maley	6.00		.03	
Dodge-Nevada Canal Company	1917	Left	6	25E	22	NE¼ NW¼	Dodge-Nevada Canal	108.80	Tracts described below:				Graham	Ownership data as below:		653.00		1.32
								32.40	5	24E	11	SE¼ SW¼	"	W. H. Roach	194.40		.40	
								7.70	5	24E	14	NE¼ NW¼	"	" "	46.20		.10	
								27.20	5	24E	23	NE¼, SE¼	"	W. A. Pitt	163.20		.34	
								11.20	5	24E	24	NE¼ SE¼	"	Gilbert Richardson	67.20		.14	
								12.20	5	24E	26	NW¼ SE¼	"	" "	73.20		.15	
								13.20	5	24E	26	SW¼ SW¼	"	" "	79.20		.17	
								1.60	6	24E	5	SE¼ NE¼	"	Martha McElroy	9.60		.02	

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diversion and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: Per irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Fort Thomas Consolidated Canal Company	1917	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	43.88	Tracts described below:				Graham	Ownership data as below:		279.00		.53
								5.20	4S	23E	19	NE¼ SE¼	"	William E. Holyoak	31.20		.60	
								9.20	4S	23E	30	NW¼ SW¼	"	J. W. Holyoak	24.80		.12	
								6.80	4S	23E	31	NW¼ SW¼	"	William H. Holyoak	33.60		.60	
								5.80	4S	23E	32	NW¼ SW¼	"	Edgar H. Chesley	40.80		.60	
								6.20	4S	23E	19	NE¼ NE¼	"	School District #31, County of Graham, State of Arizona	37.20		.60	
								2.20	4S	23E	29	SW¼ SW¼	"	Edgar H. Chesley	14.00		.60	
								5.20	4S	23E	30	SE¼ SW¼	"	" " "	42.80		.60	
								1.80	4S	23E	32	NW¼ SW¼	"	Mrs. Clara Hinton	5.80		.20	
Montezuma Canal Company	1917	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	31.80	Tracts described below:				Graham	Ownership data as below:		139.00		.27
								1.80	7S	26E	13	SE¼ SW¼	"	(Sarah L. Richardson and Roberts J. Richardson				
								28.00	7S	27E	11	SW¼ SE¼	"		9.00		.27	
															130.00		.36	
Smithville Canal Company	1917	Left	6S	23E	36	SW¼ NE¼	Smithville Canal	2.00	6S	24E	19	NW¼ SE¼	Graham	Lee Keller		12.00		.02
Graham Canal Company	1917	Right	7S	26E	9	NE¼ NW¼	Graham Canal	133.48	Tracts described below:				Graham	Ownership data as below:		800.00		1.06
								25.52	6S	24E	2	SE¼ SE¼	"	D. Rapar	177.60		.27	
								2.80	6S	24E	3	NE¼ NE¼	"	James A. Hancock	15.60		.02	
								17.00	6S	24E	3	SE¼ NE¼	"	" " "	105.00		.20	
								6.20	6S	24E	7	SW¼ NE¼	"	Guy W. Lamoreaux	49.20		.10	
								14.00	6S	24E	11	NE¼ SE¼	"	E. D. Howard	98.00		.20	
								14.00	6S	24E	12	SE¼ SE¼	"	" " "	98.00		.20	
								2.00	6S	24E	13	SW¼ NE¼	"	Pratt Stewart	67.00		.20	
								2.00	6S	24E	13	SE¼ NW¼	"	John Nolles	14.00		.20	
								5.00	6S	24E	25	NE¼ SW¼	"	" "	13.20		.11	
								5.00	6S	24E	25	SW¼ NW¼	"		65.40		.11	
								4.20	6S	24E	25	NW¼ NW¼	"	Jerome Walker	33.60		.20	
								4.00	6S	24E	26	SW¼ NW¼	"	W. H. Spafford	34.00		.20	
								1.00	6S	24E	26	SW¼ NW¼	"	" " "	37.00		.20	
								7.20	6S	24E	26	SW¼ NW¼	"	Alma Peterson	11.40		.20	
								9.20	6S	24E	26	SE¼ NW¼	"	" "	46.20		.20	
								9.20	6S	24E	26	SE¼ NW¼	"	Jerome Walker	43.20		.20	
Curtis Canal Company	1917	Right	6S	24E	12	NW¼ NW¼	Curtis Canal	21.40	Tracts described below:				Graham	Ownership data as below:		138.40		.27
								17.60	5S	24E	7	NE¼ SE¼	"	M. P. McEuen	108.80		.27	
								3.80	5S	24E	32	NW¼ NE¼	"	Lee L. Palmer	21.60		.06	
T. D. Burton	1917	Right	4S	23E	29	SE¼ SW¼	Pumping Plant Diversion	48.20	Tracts described below:				Graham	Ownership data as below:		341.00		.80
								4.00	4S	23E	29	NE¼ SW¼	"	T. D. Burton	28.00		.06	
								23.40	4S	23E	32	NW¼ SW¼	"	" " "	134.40		.32	
									4S	23E	32	SW¼ SW¼	"	" " "	5.00		.01	
								15.20	4S	23E	32	SE¼ SW¼	"	" " "	84.20		.19	
Meddle Canal Company	1917	Left	10S	21W	11	NW¼ SE¼	Meddle Canal	6.00	Tracts described below:				Greenlee	Ownership data as below:		80.00		.20
								1.20	8S	22E	34	SW¼ SE¼	"	R. C. Moore	7.20		.16	
								1.00	9S	22E	2	NE¼ SW¼	"	Anne P. Fuerte	6.00		.14	
								4.20	9S	22E	3	NW¼ SW¼	"	" " "	25.80		.50	
Valley Canal Company	1917	Right	10S	21W	4	NW¼ NW¼	Valley Canal	10.10	9S	21E	19	SW¼ SE¼	Greenlee	Nance E. Ragsdale & Margaret I. Ragsdale		60.00		.13

Party entitled to divert from the stream	Date of priority	Point of diversion: Stream	Point of diversion: Location: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Colmenero Canal Company	1917	Right	6S	31E	11	NW¼ SE¼	Colmenero Canal	9.10	Tracts described below:									
								1.90	7S	31E	31	SE¼ NE¼	Grenales	Ownership data as below:		84.60		.12
								8.10	7S	31E	31	SE¼ NW¼	"	Roy D. Williams	6.00		.02	
															48.60		.10	
R. C. Gilliland	1917	Right	6S	30E	1	NE¼ SE¼	Pumping Plant direct	18.10	Tracts described below:									
								4.00	6S	30E	1	NE¼ SW¼	Grenales	Ownership data as below		108.60		.22
								14.10	6S	30E	1	NW¼ SE¼	"	R. C. Gilliland	24.00		.04	
															84.60		.18	
J. W. Foote	1917	Right	6S	31E	7	N½ NW¼	Pumping Plant	6.20	6S	31E	6	SW¼ SW¼	Grenales	J. W. Foote		27.20		.03
Sunset Canal Company	1917	Right	19S	20W	21	SW¼ NW¼	Sunset Canal	256.20	Tracts described below:				Ridalgo	Ownership data as below:		1327.20		2.70
								14.00	18S	21W	32	SW¼ NW¼	"	R. J. McLaren	101.40		.21	
								8.70	18S	21W	29	SE¼ NE¼	"	Hans Mortensen	52.20		.11	
								.80	18S	21W	32	NE¼ SE¼	"	" " "	4.80		.01	
								7.70	18S	21W	32	NE¼ SE¼	"	M. M. Allred & W. J. Mabie	46.20		.10	
								12.30	18S	21W	33	NW¼ SW¼	"	Farley F. Merrill	73.80		.15	
								7.40	18S	21W	33	SW¼ NW¼	"	R. Y. Whipple	44.40		.09	
								14.60	18S	21W	28	NW¼ SE¼	"	" " "	87.60		.18	
								5.80	18S	21W	32	NE¼ SW¼	"	" " "	34.80		.07	
								4.80	18S	21W	32	SW¼ NW¼	"	" " "	28.80		.06	
								5.00	18S	21W	32	SW¼ NE¼	"	P. L. Lunt	30.00		.06	
								12.70	18S	21W	32	SE¼ NW¼	"	M. C. Payne	76.20		.16	
								6.20	18S	21W	32	NE¼ SW¼	"	" " "	37.20		.08	
								9.80	18S	21W	32	NW¼ SE¼	"	" " "	58.80		.13	
								12.80	18S	21W	33	SW¼ NE¼	"	" " "	76.80		.16	
								14.80	18S	21W	33	NW¼ SE¼	"	O. O. Payne	88.80		.19	
								1.70	18S	21W	28	SE¼ SE¼	"	" " "	10.20		.02	
								.20	18S	21W	33	NW¼ SE¼	"	Mrs. T. M. Williamson	1.20		.01	
								7.80	18S	21W	33	NE¼ SE¼	"	Anna H. Lunt	46.80		.09	
								8.40	18S	21W	33	NW¼ SW¼	"	" " "	50.40		.11	
								9.20	18S	21W	33	SE¼ SE¼	"	John B. Jones	55.20		.11	
								12.00	18S	21W	28	NW¼ SW¼	"	Farley F. Merrill	72.00		.16	
								7.10	18S	21W	33	SW¼ NW¼	"	" " "	42.60		.09	
								27.00	18S	21W	33	SW¼ SW¼	"	H. Grady	162.00		.34	
								14.80	18S	21W	33	NW¼ SW¼	"	O. V. Lunt	187.60		.38	
								5.40	18S	21W	34	SW¼ SW¼	"	Orson A. Merrill	111.00		.22	
														Church of Jesus Christ of Latter Day Saints, J. H. Tyree, trustee	32.40		.06	
								1.40	19S	21W	33	SW¼ NE¼	"	Mary Jane Jones	8.40		.03	
								8.10	19S	21W	33	SE¼ NE¼	"	" " "	48.60		.10	
								1.80	19S	21W	28	NW¼ SE¼	"	" " "	8.80		.02	
								7.70	19S	21W	32	NE¼ SE¼	"	" " "	46.20		.10	
Cooper & Wyatham Canal Company	1917	Right	19S	21W	11	NW¼ SE¼	Cooper & Wyatham Canal	97.60	Tracts described below:				Hidalgo	Ownership data as below:		586.60		1.22
								5.00	19S	21W	31	Lot 2	"	Randall Lunt, Administrator of the Estate of Jasper Cain, deceased	17.40		.04	
								13.10	19S	21W	32	NE¼ SW¼	"	R. W. Brooks	78.60		.16	
								17.20	19S	21W	33	SE¼ NW¼	"	" " "	103.20		.22	
								14.60	19S	21W	33	NW¼ SW¼	"	Fritz Wahlen	87.60		.18	
								1.70	19S	21W	33	SE¼ SE¼	"	A. C. Grunwell	10.20		.02	
								22.80	19S	21W	33	SW¼ SW¼	"	R. H. Lunt	181.80		.38	
								17.20	19S	21W	33	NW¼ SE¼	"	O. V. Lunt	107.40		.22	
								5.00	19S	21W	28	SE¼ SW¼	"	R. G. Davidson	12.00		.02	
								.40	19S	21W	33	SW¼ SW¼	"	A. C. Grunwell	2.40		.01	
								2.40	19S	21W	3	SW¼ NE¼	"	George B. Cooper, Jr., Administrator of the estate of George Cooper, deceased.	14.40		.03	

180

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Point of diversion: Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired	Diversion right: For irrigation season in cu.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Union Canal Company	1918	Left	7S	27E	18	SE¼ NW¼	Union Canal	19.10 14.10 4.80	Tracts described below: " "				Graham	Ownership data as below: W. A. Carter, Jr. C. M. Reed		114.00 90.00 24.00		.24 .18 .06
Dodge-Nevada Canal Company	1918	Left	6S	23E	20	NE¼ NW¼	Dodge-Nevada Canal	12.90 3.70 6.80 2.30	Tracts described below: " " "				Graham	Ownership data as below: Foyet Gilchrist " O. J. Hatch		72.00 22.20 32.60 12.80		.18 .05 .07 .03
Fort Thomas Consolidated Canal Company	1918	Left	6S	26E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	25.80 24.80 1.00	Tracts described below: " "				Graham	Ownership data as below: J. W. Smith " " "		150.80 146.80 13.00		.33 .31 .02
Graham Canal Company	1918	Right	7S	20E	9	NE¼ NW¼	Graham Canal	73.90 12.80 13.10 4.80 27.10 6.00 4.00 6.00	Tracts described below: " " " " " " "				Graham	Ownership data as below: Thomas McGuire John L. Hoppus George C. Peck. A. J. Wynn R. D. Lamoreaux John C. Cooper J. I. Palmer		438.40 76.80 72.60 24.60 192.00 28.00 24.00 48.00		.91 .16 .15 .07 .40 .06 .05 .10
Cooper & Windham Extension Canal Company. Under contract whereby Cooper & Windham Ditch makes actual diversion.	1918	Right	19S	21W	12	NW¼ SE¼	Cooper & Windham Ditch & Cooper & Windham Extension Canal.	93.00 23.00 2.40 14.70 6.70 4.00 13.80 10.80 7.20	Tracts described below: " " " " " " "				Greenlee	Ownership data as below: J. M. Gilliland " " " " " " Edward Lent " " Emil Girard " " " "		372.00 1.20 14.60 100.20 20.20 20.00 71.80 64.80 43.80		.79 .01 .05 .31 .08 .08 .25 .14 .09
Valley Canal Company	1918	Right	19S	21W	4	NE¼ NW¼	Valley Canal	2.00 4.80 2.80	Tracts described below: " "				Greenlee	Ownership data as below: Emil Girard " "		81.00 34.80 16.80		.11 .07 .04
Maddix Canal Company	1918	Left	19S	21W	11	NW¼ SE¼	Maddix Canal	4.00 1.00 8.00	Tracts described below: " "				Greenlee	Ownership data as below: Nellie R. Hoch C. C. Fenmore		24.00 6.00 18.00		.03 .01 .04
J. W. Poole	1918	Right	6S	21E	7	W½ NW¼	Pumping Plant Indirect	6.30 3.50 2.80	Tracts described below: " "				Greenlee	Ownership data as below: J. W. Poole " "		39.00 21.60 17.40		.09 .04 .04
R. Barton	1918	Right	7S	21E	18	NE¼ NW¼	Pumping Plant Direct	1.30	7S	21E	9	SE¼ SW¼	Greenlee	R. Barton		6.00		.09

181

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description Referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Portion owning said lands whose jurisdiction required herein	Diversion right: For irrigation season in cu. ft. per sec.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Montezuma Canal Company	1919	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	80.00	Tracts described below:				Graham	Ownership data as below:		484.00		1.01
								1.00	7S	24E	19	NE¼ NW¼	"	J. A. Farley	18.00		.04	
								18.00	7S	26E	12	SE¼ SE¼	"	Elam Olson	108.00		.23	
								7.00	7S	28E	18	NE¼ SE¼	"	" "	42.00		.10	
								10.00	7S	28E	14	NE¼ NW¼	"	Edward M. Claridge	60.00		.13	
								12.00	7S	26E	14	NW¼ NW¼	"	" " "	72.00		.16	
								19.20	7S	26E	14	SW¼ NW¼	"	" " "	115.20		.24	
								2.00	7S	26E	14	SE¼ NW¼	"	" " "	24.00		.11	
								2.00	7S	28E	21	NW¼ SW¼	"	William Ellsworth	12.00		.03	
Brown Canal Company	1919	Right	6S	28E	30	SE¼ SE¼	Brown Canal	23.80	Tracts described below:				Graham	Ownership data as below:		142.80		.35
								5.90	6S	28E	31	SW¼ NE¼	"	J. W. Earvin	23.40		.05	
								16.90	6S	28E	31	SE¼ NE¼	"	" " "	119.40		.30	
Union Canal Company	1919	Left	7S	27E	16	SE¼ NW¼	Union Canal	48.00	Tracts described below:				Graham	Ownership data as below:		288.00		.72
								12.00	7S	26E	16	NE¼ NE¼	"	(Charles M. Parsley & Robert L. Nash	72.00		.18	
								2.00	7S	26E	16	NW¼ NE¼	"		18.00		.04	
								2.00	7S	26E	16	SW¼ NE¼	"		18.00		.03	
								12.00	7S	26E	16	SE¼ NE¼	"		88.00		.17	
								12.00	7S	26E	16	NE¼ NW¼	"		73.20		.18	
								2.00	7S	26E	16	NW¼ NW¼	"		12.00		.03	
								8.00	7S	26E	16	SW¼ NW¼	"	J. T. Owens, Jr.	51.60		.11	
Smithville Canal Company	1919	Left	6S	28E	33	SW¼ NE¼	Smithville Canal	44.40	Tracts described below:				Graham	Ownership data as below:		272.40		.67
								4.40	6S	28E	33	SE¼ SW¼	"	P. A. Norton	25.40		.11	
								4.40	6S	28E	34	NE¼ NW¼	"	" "	24.60		.06	
								8.00	6S	28E	34	NW¼ NW¼	"	Thomas Batty	20.00		.05	
								24.00	6S	28E	33	SW¼ NW¼	"	E. William Bingham	198.00		.32	
Dodge-Nevada Canal Company	1919	Left	6S	26E	20	NE¼ NW¼	Dodge-Nevada Canal	104.20	Tracts described below:				Graham	Ownership data as below:		458.48		1.10
								16.00	6S	25E	14	NW¼ NE¼	"	B. F. Bryan	92.00		.18	
								6.20	6S	25E	23	NE¼ NW¼	"	J. L. Green	37.20		.08	
								2.00	6S	25E	24	SW¼ NE¼	"	Agnes Maley	18.00		.04	
								6.80	6S	25E	24	NE¼ SE¼	"	Forrest Gilland	54.80		.12	
								46.00	6S	25E	26	NE¼ SE¼	"	Charlie F. Johns	240.00		.52	
								20.00	6S	24E	31	NW¼ NW¼	"	Mrs. J. E. Chell	153.68		.33	
								4.00	6S	24E	31	SW¼ NW¼	"	" " "	28.00		.06	
Fort Thomas Consolidated Canal Company	1919	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	52.00	Tracts described below:				Graham	Ownership data as below:		372.00		.78
								4.80	6S	24E	27	SW¼ SW¼	"	E. W. Black	34.00		.11	
								2.00	6S	23E	18	SE¼ NE¼	"	J. E. Pulsipher	18.00		.04	
								2.80	6S	23E	13	NE¼ NE¼	"	(William Wemaire &	14.00		.03	
								12.80	6S	23E	13	SE¼ NE¼	"	(Charles Wemaire	108.00		.23	
								31.00	6S	24E	18	NE¼ SW¼	"	David Rogers	180.00		.37	
Graham Canal Company	1919	Right	7S	26E	9	NE¼ NW¼	Graham Canal	24.00	Tracts described below:				Graham	Ownership data as below:		147.60		.31
								4.00	6S	26E	31	SE¼ NW¼	"	William A. Peak	33.00		.07	
								4.00	6S	25E	6	SE¼ SE¼	"	William E. Bryan	30.00		.06	
								2.00	6S	26E	17	NE¼ SW¼	"	W. M. Blair	13.00		.03	
								2.00	6S	26E	17	SE¼ SW¼	"	" " "	13.00		.03	
								10.00	6S	26E	31	NW¼ NE¼	"	A. T. West	68.00		.12	

182

Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands whose jurisdiction acquired herein	Diversion right: For irrigation season in cu. ft. per sec.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Curtis Canal Company	1919	Right	6S	24E	19	NW¼ NW¼	Curtis Canal	10.80 5.00 9.00 4.00 4.40	Tracts described below: 6S 6S 6S 6S	24E 24E 24E 24E	29 32 33 33	SE¼ SW¼ SE¼ NW¼ SE¼ NW¼ NE¼ SW¼	Graham	Ownership data as below: E. Palmer Antone Christensen A. A. Wilkins	13.20 24.00 24.00	117.00	.03 .11 .06	.30
Sexton Canal Company	1919	Left	7S	31E	31	SW¼ SE¼	Sexton Canal	25.40 12.20 .70 .90 10.60	Tracts described below: 7S 7S 7S 7S	31E 31E 31E 31E	18 17 17 32	SW¼ SW¼ SE¼ SE¼ NE¼ NE¼ NW¼ NW¼	Greenlee	Ownership data as below: West White	75.20 4.20 2.40	182.40	.17 .01 .01 .13	.32
J. W. Poole	1919	Right	6S	31E	7	N½ NW¼	Pumping Plant Diesel	5.50	6S	31E	7	NW¼ NW¼	Greenlee	J. W. Poole		33.00		.07
Montezuma Canal Company	1920	Left	7S	27E	17	NE¼ NE¼	Montezuma Canal	10.00	7S	26E	12	SW¼ NE¼	Graham	Albert Gillespie		58.00		.12
Union Canal Company	1920	Left	7S	27E	18	SE¼ NW¼	Union Canal	11.10 5.00 5.00 2.00	Tracts described below: 6S 6S 6S	26E 26E 26E	13 24 19	SE¼ SW¼ NE¼ SE¼ SW¼ SW¼	Graham	Ownership data as below: C. E. Ferris Charles Rogers W. B. McBride	33.00 21.00 12.00	68.00	.06 .04 .04	.14
Dodge-Nevada Canal Company	1920	Left	6S	25E	25	NE¼ NW¼	Dodge-Nevada Canal	75.20 14.00 10.00 10.00 5.00 15.15 5.95 4.00 10.00	Tracts described below: 6S 6S 6S 6S 6S 6S 6S 6S	23E 23E 23E 24E 24E 24E 24E 24E	29 24 20 19 24 31 31 31	NE¼ NW¼ SW¼ NW¼ NW¼ SE¼ NW¼ SE¼ NE¼ NW¼ NE¼ NW¼ NW¼ NW¼ SW¼ NW¼ SE¼ NW¼	Graham	Ownership data as below: J. L. Green J. R. Nellon Gilbert Richardson Mrs. J. E. Cluff	84.00 96.00 96.80 18.00 103.60 83.00 26.00 61.20	469.90	.16 .12 .19 .24 .21 .16 .06 .15	.68
Fort Thomas Consolidated Canal Company	1920	Left	6S	24E	4	NE¼ NW¼	Fort Thomas Consolidated Canal	61.70 2.00 .80 5.90 10.00 34.00	Tracts described below: 6S 6S 6S 6S 6S	23E 23E 23E 23E 23E	19 24 24 24 13	NE¼ NE¼ NW¼ NE¼ NE¼ NW¼ NW¼ NE¼ SW¼ NE¼	Graham	Ownership data as below: E. W. Hinds George P. Ballard William G. Tyler	12.00 4.20 24.40 98.00 204.00	316.20	.02 .01 .07 .12 .01	.30
Graham Canal Company	1920	Right	7S	26E	6	NE¼ NW¼	Graham Canal	11.80 1.80 10.00	Tracts described below: 6S 6S	23E 23E	21 22	SE¼ NE¼ NW¼ SE¼	Graham	Ownership data as below: Brigham Stovall Charles Watson	2.00 80.00	82.00	.02 .12	.14
Duncan Canal Company	1920	Left	6S	33E	28	NE¼ SW¼	Duncan Canal	5.80 5.00 .80	Tracts described below: 6S 6S	22E 32E	16 19	SE¼ NE¼ NE¼ SE¼	Greenlee	Ownership data as below: J. L. T. Walters	30.00 4.80	84.80	.06 .01	.07
Grady L. Herring	1920	Left	8S	18E	34	SE¼ NW¼	Pumping Plant Diesel	28.00	8S	18E	34	S½ NW¼ & N½ SW¼	Final	Grady L. Herring		184.20		.38

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Party entitled to divert from the stream	Date of priority	Point of diversion: Side of stream	Location referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	Name of diverting and/or carrying structure	Lands for which right acquired: Number of acres	Description referred to G. & S. R. B. & M. or N. M. B. & M.: Twp.	Rge.	Sec.	Subdivision	County	Parties owning said lands when jurisdiction acquired herein	Diversion right: For irrigation season in ac.-ft.: Individual	Total	Maximum rate of diversion in cu. ft. per sec.: Individual	Total
Black & McCluskey Canal Company	1920	Left	26S	23E	19	NE¼ SE¼	Black & McCluskey Canal.	4.00	26S	31E	12	SE¼ NE¼	Greenlee	W. W. Brooks		24.00		.03
Colmenero Canal Company	1921	Right	25S	31E	11	NW¼ SE¼	Colmenero Canal.	3.90	25S	31E	21	SW¼ SE¼	Greenlee	Albert L. Barber		23.40		.03
Meddle Canal Company	1921	Left	19S	21W	11	NW¼ SE¼	Meddle Canal	6.30	19S	21W	2	NW¼ SW¼	Hidalgo	G. W. Johnson		37.80		.06
United States	1924	Both	4S	11E	2	NW¼	Ashurst-Hayden Diversion Dam and Florence-Casa Grande Canal, and Sanston diversion dam.	100,548	Lands of San Carlos Project				Final	For full statement of this right see Article VI (d).		603,278		1256.3
			4S	8E	12	SE¼												
United States	1924	Channel	2S	18E	17	On San Carlos Indian Reservation.	Coolidge Dam across channel and San Carlos Storage reservoir.	108,548	Lands of San Carlos Project				Final	For full statement of this right see Article VI (d)	—1,256,800 capacity—			
Sunset Canal Company	1925	Right	19S	20W	31	SW¼ NW¼	Sunset Canal	2.20	19S	21W	36	SW¼ SW¼	Hidalgo	Owen A. Merrill		13.20		.02
Sunset Canal Company	1926	Right	19S	20W	31	SW¼ NW¼	Sunset Canal	4.38	19S	21W	36	SE¼ SW¼	Hidalgo	E. C. Payne		26.00		.04
Nevada Consolidated Copper Company	1926	Left	5S	15E	16	SE¼ SE¼	Vane Ditch	20.00	5S	16E	17	W½ NE¼, NE¼ NW¼	Final	Nevada Consolidated Copper Company		120.00		.21
Meddle Canal Company	1929	Left	19S	21W	11	NW¼ SE¼	Meddle Canal	34.24	Tracts described below:				Hidalgo	Ownership data as below:		205.44		.44
								17.08	19S	21W	4	Lot 4	"	Amanda Matern	102.48		.22	
								17.02	19S	21W	5	Lot 1	"	" "	102.72		.22	

184

Table No. 1
Montezuma Canal—Lands and parties affected by priorities antedating 1908

Number of acres	Lands: Described to G. & S. R. R. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
4.0	7S	23E	3	SE¼ SW¼	Mrs. Nida Lindsey
8.7	7S	23E	3	SE¼ SW¼	J. A. Farley
8.7	7S	24E	10	NE¼ NE¼	Town of Thatcher
11.4	7S	23E	10	NE¼ NE¼	Roy A. Leyton
38.8	7S	23E	10	NW¼ NE¼	A. A. Allred
4.2	7S	24E	10	SW¼ NE¼	Town of Thatcher
16.0	7S	23E	10	SE¼ NE¼	(Frank V. Beare, Administrator of the Estate of E. E. Beare, deceased.
4.8	7S	24E	10	SE¼ NE¼	Town of Thatcher
38.0	7S	23E	11	SW¼ NW¼	" " "
38.0	7S	24E	11	SE¼ NW¼	" " "
38.0	7S	23E	11	NW¼ SW¼	" " "
38.0	7S	24E	11	NW¼ SW¼	" " "
4.0	7S	23E	11	NW¼ SE¼	Evans Coleman
2.0	7S	24E	11	NE¼ SE¼	Arizona Eastern Railroad Company.
L 7	7S	23E	11	NE¼ SE¼	Town of Thatcher
16.0	7S	23E	11	NW¼ SE¼	Evans Coleman
2.4	7S	24E	11	NW¼ SE¼	Hyrum C. Haywood
8.2	7S	23E	11	NW¼ SE¼	Guy W. Lamoreaux
2.1	7S	24E	11	NW¼ SE¼	Evans Coleman
18.6	7S	23E	11	SE¼ SE¼	Kimbal Meahem
L 4	7S	23E	11	SE¼ SE¼	Davidsel Ellsworth
8.4	7S	24E	11	SE¼ SE¼	Edward M. Claridge
L 3	7S	23E	12	NW¼ SW¼	Town of Thatcher
8.8	7S	24E	12	NW¼ SW¼	" " "
18.0	7S	23E	12	SW¼ NW¼	Mrs. Sarah E. Elmer
7.6	7S	24E	12	SW¼ NW¼	Edward M. Claridge
8.0	7S	23E	12	SW¼ NW¼	S. V. Pollock
8.3	7S	23E	12	SW¼ NW¼	C. M. Meter
4.2	7S	24E	12	SE¼ NW¼	Mrs. Isabelle Pace
38.0	7S	23E	12	NE¼ SW¼	S. L. Johns & D. L. Johns
21.0	7S	24E	12	NW¼ SW¼	Town of Thatcher
4.8	7S	24E	12	NW¼ SW¼	Arizona Eastern Railroad Company.
2.0	7S	23E	12	SW¼ SW¼	S. L. Johns & D. L. Johns
2.7	7S	23E	12	SW¼ SW¼	Mrs. Isabelle Pace
1.8	7S	23E	12	SW¼ SW¼	M. Mortensen
4.6	7S	23E	12	SW¼ SW¼	Evans Coleman
18.0	7S	24E	12	SW¼ SW¼	Davidsel Ellsworth
11.0	7S	23E	13	SE¼ SW¼	Mrs. Isabelle Pace
18.3	7S	24E	13	SE¼ SW¼	M. Mortensen
8.4	7S	24E	13	SE¼ SW¼	Mrs. Isabelle Pace
8.4	7S	24E	13	NW¼ SE¼	" " "
2.4	7S	24E	13	NW¼ SE¼	Davidsel Ellsworth
17.8	7S	24E	13	SW¼ SE¼	R. O. Layton, jr.
37.9	7S	23E	13	NE¼ NW¼	J. D. Lee
21.9	7S	24E	13	NW¼ NE¼	W. H. Clifford
13.9	7S	23E	13	SW¼ NE¼	L. E. Bamfield
38.0	7S	24E	13	SW¼ NE¼	R. L. Pomeroy
22.8	7S	24E	13	SE¼ NE¼	W. H. Clifford
7.7	7S	23E	13	SE¼ NE¼	George Willes
18.2	7S	24E	13	NE¼ NW¼	J. D. Lee
18.9	7S	23E	13	NE¼ NW¼	

Table No. 1 (Continued)
Montezuma Canal—Lands and parties affected by priorities antedating 1908

Number of acres	Lands: Described to G. & S. R. R. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
28.6	7S	23E	13	NW¼ NW¼	Marion Lee
7.0	7S	23E	13	NW¼ NW¼	W. W. Wild
18.9	7S	23E	13	SW¼ NW¼	Alex Leyton
14.6	7S	24E	13	SE¼ NW¼	J. D. Lee
13.0	7S	24E	13	SE¼ NW¼	George Killian
2.9	7S	23E	13	NE¼ SW¼	" "
14.1	7S	24E	12	NE¼ SE¼	J. L. Freeman
4.8	7S	24E	13	NE¼ SE¼	Mrs. Belle Morris
L 3	7S	24E	13	NE¼ SE¼	Elson Olsen
4.1	7S	24E	13	NW¼ SE¼	" "
18.1	7S	24E	13	NW¼ SE¼	Asahel Clifford
L 1	7S	24E	14	SE¼ NE¼	Alex Leyton
13.8	7S	24E	13	SW¼ NE¼	Albert Gillespie
4.9	7S	24E	13	SW¼ NW¼	William E. Gillespie
14.7	7S	24E	13	SW¼ NW¼	James Gillespie
2.0	7S	24E	13	SW¼ NW¼	Shell Gillespie
20.0	7S	24E	13	NW¼ SW¼	James Gillespie
15.0	7S	24E	13	NW¼ SW¼	Shell Gillespie
20.9	7S	24E	13	NW¼ SW¼	" "
18.1	7S	24E	13	NW¼ SW¼	William E. Gillespie
20.4	7S	24E	13	SW¼ SW¼	Charles Beers
12.8	7S	24E	13	SW¼ SW¼	James Gillespie
14.6	7S	24E	13	SW¼ SW¼	Shell Gillespie
20.0	7S	24E	13	NW¼ SE¼	Edward L. Gillespie
4.2	7S	24E	13	NW¼ SE¼	" "
20.8	7S	24E	18	NW¼ SW¼	Albert Gillespie
22.7	7S	24E	18	SW¼ SE¼	" "
4.1	7S	24E	13	SW¼ SE¼	Edward L. Gillespie
24.8	7S	24E	14	SE¼ NE¼	" "
12.7	7S	24E	14	NE¼ NE¼	Edward M. Claridge
18.0	7S	24E	14	NW¼ NE¼	" " "
40.0	7S	24E	14	SW¼ NE¼	" " "
20.0	7S	24E	14	SE¼ NE¼	" " "
2.8	7S	23E	14	NE¼ NW¼	" " "
10.8	7S	23E	14	NW¼ NW¼	" " "
21.0	7S	23E	14	SE¼ NW¼	" " "
28.7	7S	23E	14	NE¼ SW¼	" " "
24.3	7S	24E	14	NW¼ SW¼	" " "
27.8	7S	23E	14	SW¼ SW¼	" " "
24.2	7S	24E	14	SE¼ SW¼	" " "
21.8	7S	23E	14	NE¼ SE¼	" " "
28.1	7S	23E	14	SW¼ SE¼	" " "
21.2	7S	24E	14	SE¼ SE¼	" " "
20.0	7S	24E	15	NE¼ NW¼	W. A. Johns & L. A. Johns
37.2	7S	24E	15	NW¼ SW¼	" " " " " "
38.6	7S	24E	15	SW¼ NW¼	" " " " " "
34.2	7S	24E	16	NW¼ SE¼	Charles M. Pursley and Robert L. Nash
37.7	7S	23E	15	SW¼ SE¼	N. W. Stevenson
34.1	7S	24E	16	SE¼ SE¼	" " "
7.0	7S	23E	16	SW¼ NE¼	John W. Morris
1L 2	7S	23E	16	SE¼ NE¼	J. T. Orme, jr.
3L 2	7S	24E	16	SW¼ NW¼	Lawrence Fuller
4.1	7S	23E	16	SE¼ NW¼	P. Chandler
2.9	7S	24E	16	SE¼ NW¼	Tom Aranda

Table No. 1 (Continued)
Montezuma Canal—Lands and parties affected by priorities antedating 1908

Number of acres	Lands: Described to G. & S. R. R. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
12.9	7S	24E	16	SE¼ NW¼	Lawrence Fuller
24.6	7S	24E	16	NE¼ SW¼	L. A. Nelson
4.0	7S	24E	16	NE¼ SW¼	Lawrence Fuller
38.9	7S	24E	16	NW¼ SW¼	" "
27.4	7S	24E	16	SW¼ SW¼	Henry Clifford, jr.
7.9	7S	24E	16	SE¼ SW¼	" " "
4.5	7S	24E	16	SE¼ SW¼	L. A. Nelson
32.6	7S	24E	16	SW¼ SW¼	Mrs. Thomas Blake
24.1	7S	24E	16	NW¼ SE¼	C. E. Owens
14.4	7S	24E	16	NW¼ SE¼	" "
7.0	7S	24E	16	NW¼ SE¼	Hugh Foster
4.8	7S	24E	16	NW¼ SE¼	L. A. Nelson
L 5	7S	24E	16	SW¼ SE¼	" "
38.5	7S	24E	16	SW¼ SE¼	Hugh Foster
11.0	7S	24E	16	SE¼ SE¼	Ramon Gauna
L 6	7S	24E	16	SE¼ SE¼	Pedro Ruiz
14.0	7S	24E	16	SE¼ SE¼	Joaquin Padilla
L 1	7S	24E	17	NE¼ NE¼	Austin Evans
38.6	7S	24E	17	SW¼ NE¼	C. S. Cooney, Administrator of the Estate of F. W. Hays, deceased.
21.2	7S	24E	17	SE¼ NE¼	Austin Evans
7.0	7S	24E	17	NE¼ NW¼	Town of Safford
8.1	7S	24E	17	NW¼ NW¼	" " "
18.0	7S	24E	17	SW¼ NW¼	George P. Jackson
1L 7	7S	24E	17	SW¼ NW¼	Ira N. Hampton
L 7	7S	24E	17	SW¼ NW¼	Cora Krueger
2.3	7S	24E	17	SW¼ NW¼	J. M. Wilson
4.0	7S	24E	17	SW¼ NW¼	Clarence Bartlett
2.0	7S	24E	17	SW¼ NW¼	George Van Camig
2.0	7S	24E	17	SW¼ NW¼	Town of Safford
18.0	7S	24E	17	SE¼ NW¼	R. S. Clarke
2.8	7S	24E	17	SE¼ NW¼	Ben T. Pratt
4.3	7S	24E	17	SE¼ NW¼	Mrs. V. M. Slater
4.9	7S	24E	17	SE¼ NW¼	W. F. Barrett
L 8	7S	24E	17	SE¼ NW¼	Elsie Owen
2.4	7S	24E	17	SE¼ NW¼	M. E. Freeman
2.7	7S	24E	17	SE¼ NW¼	J. R. Gilmore
2.1	7S	24E	17	SE¼ NW¼	A. T. West
4.7	7S	24E	17	SE¼ NW¼	Spencer Kimball
2.4	7S	24E	17	SE¼ NW¼	William Morris
2.0	7S	24E	17	SE¼ NW¼	Lartter Corporation of the Church of Jesus Christ of Latter Day Saints
2.0	7S	24E	17	SE¼ NW¼	J. C. Anglin
L 9	7S	24E	17	NE¼ SW¼	J. F. Robinson
L 8	7S	24E	17	NE¼ SW¼	George R. Quinn
8.0	7S	24E	17	NE¼ SW¼	J. F. Gaggs
2.0	7S	24E	17	NE¼ SW¼	R. A. Smith, Sr.
L 11	7S	24E	17	NE¼ SW¼	Mrs. J. B. Smithson
L 10	7S	24E	17	NE¼ SW¼	Warren Stagnaro
6.6	7S	24E	17	NE¼ SW¼	J. A. Walker
2.6	7S	24E	17	NE¼ SW¼	Orson F. Ferris
L 0	7S	24E	17	NE¼ SW¼	

TABLE No. 1 (Continued)
Montezuma Canal—Lands and parties affected by priorities antedating 1903

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein
0.7	7S	18E	17	NE¼ SW¼	G. L. Crawford
2.2	7S	20E	17	NE¼ SW¼	John West
1.8	7S	20E	17	NE¼ SW¼	H. P. Rogers
0.8	7S	20E	17	NE¼ SW¼	C. D. Walker
2.0	7S	20E	17	NE¼ SW¼	Adam Walker
1.1	7S	20E	17	NE¼ SW¼	Orrie D. Brown
1.2	7S	20E	17	NE¼ SW¼	George Burrell
1.1	7S	20E	17	NE¼ SW¼	Ephraim Larson
1.3	7S	24E	17	NE¼ SW¼	Safford School District #1, County of Graham, State of Arizona.
1.9	7S	22E	17	NE¼ SW¼	Lee N. Stratton, Administrator of the Estate of Mrs. N. A. Bell, deceased.
1.5	7S	22E	17	NE¼ SW¼	Hazel Williams
1.1	7S	20E	17	NE¼ SW¼	Charles Burrell
1.1	7S	20E	17	NE¼ SW¼	J. W. Greenhalgh
1.3	7S	20E	17	NW¼ SW¼	John West
1.4	7S	20E	17	NW¼ SW¼	E. P. Stoermer
0.6	7S	20E	17	NW¼ SW¼	Dan Williams
1.1	7S	20E	17	NW¼ SW¼	Fannie Bailey
1.1	7S	20E	17	NW¼ SW¼	R. L. McAlister
1.1	7S	20E	17	NW¼ SW¼	J. W. N. Scarlett
1.0	7S	20E	17	NW¼ SW¼	C. B. Sale
0.1	7S	20E	17	NW¼ SW¼	J. F. Rhinehart
1.3	7S	20E	17	NW¼ SW¼	Sarah E. Reed
2.7	7S	20E	17	NW¼ SW¼	E. R. D. Sears
4.4	7S	20E	17	NW¼ SW¼	Austin Evans
1.1	7S	20E	17	NW¼ SW¼	John Riley
0.7	7S	20E	17	NW¼ SW¼	J. A. Chapman
4.4	7S	20E	17	NW¼ SW¼	W. A. Bennett
17.0	7S	20E	17	SW¼ SW¼	Austin Evans
2.8	7S	20E	17	SE¼ SW¼	Mrs. Virginia Curtis
2.6	7S	20E	17	SE¼ SW¼	L. B. Scarlett
1.9	7S	20E	17	SE¼ SW¼	E. A. Sewell
14.3	7S	20E	17	SE¼ SW¼	Calista B. Paul
7.8	7S	24E	17	NE¼ SE¼	W. D. Chaf & Fred M. Mitchell
20.8	7S	20E	17	NE¼ SE¼	J. W. Greenhalgh
4.6	7S	20E	17	NW¼ SE¼	William Evenson
4.2	7S	20E	17	NW¼ SE¼	John W. Myers
1.8	7S	20E	17	NW¼ SE¼	R. H. Greenhalgh
8.0	7S	20E	17	NW¼ SE¼	George Poole
8.2	7S	20E	17	NW¼ SE¼	W. A. Bennett
2.2	7S	20E	17	NW¼ SE¼	W. D. Sears
18.2	7S	24E	17	SW¼ SE¼	George Poole
2.5	7S	20E	17	SW¼ SE¼	Mrs. Nancy Palmer
1.8	7S	20E	17	SW¼ SE¼	Elam Olsen
4.3	7S	20E	17	SW¼ SE¼	Mrs. E. F. Warner
2.0	7S	20E	17	SW¼ SE¼	Francis Ellsworth
4.4	7S	20E	17	SW¼ SE¼	James B. Quinn
24.7	7S	20E	17	SE¼ SE¼	C. M. Mack
13.0	7S	20E	18	NE¼ NE¼	Town of Safford
4.1	7S	20E	18	NW¼ NE¼	Donald Kennedy
5.8	7S	20E	18	NW¼ NE¼	Myron J. Allred
2.8	7S	20E	18	NW¼ NE¼	William N. Beebe
8.4	7S	20E	18	NW¼ NE¼	Mrs. Francis Goodman

TABLE No. 1 (Continued)
Montezuma Canal—Lands and parties affected by priorities antedating 1903

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein
1.0	7S	20E	18	NW¼ NE¼	Mrs. G. R. Young and David L. Ridgeway.
12.4	7S	24E	18	SW¼ NE¼	William N. Beebe
1.8	7S	20E	18	SW¼ NE¼	D. W. Cheney
4.7	7S	20E	18	SW¼ NE¼	J. W. Greenhalgh
12.0	7S	24E	18	SW¼ NE¼	H. W. Greenhalgh
2.4	7S	20E	18	SW¼ NE¼	County of Graham, State of Arizona.
10.0	7S	20E	18	SW¼ NE¼	Martin Jacobson
2.0	7S	20E	18	SW¼ NE¼	Town of Safford
4.1	7S	20E	18	SE¼ NE¼	Mrs. Martha Skinner
4.1	7S	20E	18	SE¼ NE¼	J. R. Bingham
1.4	7S	20E	18	SE¼ NE¼	J. Bingham
2.7	7S	20E	18	SE¼ NE¼	Lesley Bingham
8.9	7S	20E	18	SE¼ NE¼	Martin Jacobsen
8.0	7S	20E	18	NE¼ NW¼	Mary Lorraine Birdno
18.2	7S	20E	18	NE¼ NW¼	Mildred R. Larson
25.9	7S	20E	18	NW¼ NW¼	O. G. Larson
13.9	7S	20E	18	SW¼ NW¼	Elam Olsen
8.7	7S	20E	18	SE¼ NW¼	Charles R. Freestone
17.6	7S	24E	18	SE¼ NW¼	M. G. Monteith
18.8	7S	20E	18	NE¼ SW¼	Asahel Clifford
30.0	7S	20E	18	NW¼ SW¼	M. G. Monteith
1.1	7S	24E	18	NW¼ SW¼	" " "
2.1	7S	20E	18	SW¼ SW¼	J. W. N. Scarlett
12.1	7S	20E	18	SE¼ SW¼	" " "
12.5	7S	24E	18	NE¼ SE¼	Hyrum Bingham
2.7	7S	20E	18	NE¼ SE¼	P. E. Jacobsen
18.8	7S	20E	18	NE¼ SE¼	Mrs. W. R. Reed
8.9	7S	20E	18	NW¼ SE¼	James Carder
7.5	7S	24E	18	NW¼ SE¼	J. W. Greenhalgh
1.9	7S	24E	18	NW¼ SE¼	J. H. Bingham
8.6	7S	24E	18	NW¼ SE¼	Mrs. W. R. Reed
8.0	7S	20E	18	NW¼ SE¼	W. R. Clifford
3.7	7S	20E	18	SW¼ SE¼	Mrs. W. R. Reed
1.5	7S	24E	18	SW¼ SE¼	W. R. Clifford
4.7	7S	24E	18	SW¼ SE¼	F. E. Kirkpatrick
12.3	7S	20E	18	SE¼ SE¼	Hart D. Emple
2.8	7S	20E	20	NE¼ NE¼	C. M. Mack
22.0	7S	20E	20	NW¼ NE¼	William Ellsworth
16.8	7S	20E	20	NW¼ NE¼	C. M. Mack
1.8	7S	20E	20	NW¼ NE¼	Henry Cooke
3.0	7S	20E	20	NW¼ NE¼	Mrs. C. F. Stanley
6.1	7S	24E	20	NW¼ NE¼	John R. Davidson
2.6	7S	24E	20	SW¼ NE¼	" " "
2.6	7S	20E	20	SW¼ NE¼	William Ellsworth
22.0	7S	20E	20	SW¼ NE¼	John R. Davidson
10.2	7S	20E	21	NE¼ NW¼	Mrs. W. R. Smith
28.6	7S	20E	21	NE¼ NW¼	Victoriano Garcia
7.8	7S	20E	21	NW¼ NW¼	Elijah Clifford
14.3	7S	20E	21	NW¼ NW¼	" "
2.4	7S	20E	21	SW¼ NW¼	Henry Clifford, Sr.
1.4	7S	20E	21	NW¼ SW¼	Mrs. Nancy Palmer
2.1	7S	20E	21	SW¼ SW¼	Elijah Clifford
4.3	7S	20E	21	SW¼ SW¼	Henry Clifford, Sr.
7.1	7S	20E	21	SW¼ SW¼	Mrs. Nancy Palmer
17.8	7S	20E	21	SE¼ SW¼	Elijah Clifford

TABLE No. 1 (Continued)
Montezuma Canal—Lands and parties affected by priorities antedating 1903

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
13.3	7S	20E	21	NE¼ NW¼	Mrs. Nancy Palmer
18.6	7S	20E	21	NE¼ NW¼	Omer Olsen
25.2	7S	20E	21	SE¼ NW¼	William Ellsworth
34.7	7S	20E	21	NW¼ SW¼	" "
23.4	7S	20E	22	NE¼ NE¼	W. L. Nelson
28.4	7S	20E	22	NW¼ NE¼	" "
7.1	7S	20E	22	NW¼ NE¼	William Ellsworth
28.4	7S	20E	22	SW¼ NE¼	" "
25.1	7S	20E	22	SE¼ NE¼	" "
25.0	7S	20E	22	NE¼ NW¼	W. L. Nelson
30.3	7S	20E	22	NW¼ NW¼	Fred H. Wimmer
1.9	7S	20E	22	SW¼ NW¼	" "
27.6	7S	20E	22	SW¼ NW¼	E. E. Monteith
7.7	7S	20E	22	SE¼ NW¼	Elijah Clifford
16.4	7S	20E	22	SE¼ NW¼	L. A. Clifford
24.1	7S	20E	22	NE¼ SW¼	William Ellsworth
6.2	7S	20E	22	NW¼ SW¼	E. E. Monteith
4.2	7S	20E	22	SE¼ SW¼	William Ellsworth
37.7	7S	20E	22	NE¼ SE¼	" "
38.1	7S	20E	22	NW¼ SE¼	" "
10.7	7S	20E	22	SW¼ SE¼	" "
1.5	7S	20E	22	SE¼ SE¼	" "
23.6	7S	20E	23	NE¼ NE¼	Ben Mayer
22.6	7S	20E	23	NW¼ NE¼	Marcel Larson
31.7	7S	20E	23	SW¼ NE¼	S. A. Merrill
8.0	7S	20E	23	SE¼ NE¼	Ben Mayer
18.8	7S	20E	23	NE¼ NW¼	S. A. Merrill
12.4	7S	20E	23	NE¼ NW¼	Mrs. Margaret R. Kempton
20.2	7S	20E	23	NW¼ NW¼	W. T. Barney
29.4	7S	20E	23	SW¼ NW¼	" "
20.9	7S	20E	23	SE¼ NW¼	S. A. Merrill
12.8	7S	20E	23	NE¼ SW¼	Mrs. Margaret R. Kempton
1.0	7S	20E	23	NE¼ SW¼	S. A. Merrill
1.6	7S	20E	23	NE¼ SW¼	W. T. Barney
24.2	7S	20E	23	NW¼ SW¼	" "
2.0	7S	20E	24	NE¼ NE¼	W. S. Baker
0.6	7S	20E	24	NW¼ NE¼	Arthur Walker
12.6	7S	20E	24	NW¼ NE¼	Isaac Williamson
1.6	7S	20E	24	NE¼ NW¼	" "
28.1	7S	20E	24	NE¼ NW¼	Arthur Walker
38.0	7S	20E	24	NW¼ NW¼	Ernst Moten
5.1	7S	20E	24	SW¼ NW¼	" "
11.6	7S	21E	18	NE¼ SW¼	J. M. Grijalva
11.8	7S	21E	18	NW¼ SW¼	H. M. Merrill
24.4	7S	21E	18	SW¼ SW¼	" "
7.6	7S	21E	18	SE¼ SW¼	" "
12.6	7S	21E	18	SE¼ SW¼	J. M. Grijalva
1.4	7S	21E	19	NW¼ NW¼	H. M. Merrill

TABLE No. 2:
San Jose Canal—Lands and parties affected by priorities antedating 1906

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
10.0	7S	2E	21	SE¼ NW¼	Robert Morris
30.0	7S	2E	21	NE¼ SW¼	" " "
5.0	7S	2E	21	NE¼ SW¼	William Ellsworth
37.0	7S	2E	21	SE¼ SE¼	Ann Packer
1.7	7S	2E	22	SW¼ NW¼	E. E. Montforth
1.3	7S	2E	22	NE¼ SW¼	William Ellsworth
30.2	7S	2E	22	NW¼ SW¼	E. E. Montforth
37.3	7S	2E	22	SW¼ SW¼	Ann Packer
33.0	7S	2E	22	SE¼ SW¼	William Ellsworth
34.0	7S	2E	22	SW¼ SE¼	" " "
34.4	7S	2E	22	NE¼ SE¼	" " "
2.5	7S	2E	23	SW¼ NE¼	J. C. Johns
17.2	7S	2E	23	SE¼ NE¼	Ben Moger
6.5	7S	2E	23	SE¼ NE¼	Leslie W. Layton
33.9	7S	2E	23	NE¼ SW¼	W. T. Harney
4.6	7S	2E	23	NW¼ SW¼	" " "
37.9	7S	2E	23	SW¼ SW¼	George Foote
38.0	7S	2E	23	SE¼ SW¼	" "
38.2	7S	2E	23	NE¼ SE¼	Leslie W. Layton
38.7	7S	2E	23	NW¼ SE¼	J. C. Johns
37.0	7S	2E	23	SW¼ SE¼	" " "
32.3	7S	2E	23	SE¼ SE¼	Leslie W. Layton
4.6	7S	2E	24	NE¼ NE¼	W. S. Baker
3.7	7S	2E	24	NE¼ NE¼	Edward L. Gillespie
2.0	7S	2E	24	NW¼ NE¼	William H. Taylor
1.6	7S	2E	24	NW¼ NE¼	John Tidwell and E. L. Tidwell Jr., Administrators of the Estate of E. L. Tidwell, deceased
1.0	7S	2E	24	NW¼ NE¼	Charles F. Salmon
2.5	7S	2E	24	NW¼ NE¼	Mrs. Marcelina Padilla
8.2	7S	2E	24	NW¼ NE¼	Leslie W. Layton
9.2	7S	2E	24	NW¼ NE¼	Mrs. J. S. Miles
36.8	7S	2E	24	SW¼ NE¼	Albert Stephens
1.5	7S	2E	24	SW¼ NE¼	Mrs. J. S. Miles
30.3	7S	2E	24	SE¼ NE¼	" " "
2.2	7S	2E	24	SE¼ NE¼	Mrs. Belle Epley
8.2	7S	2E	24	SE¼ NE¼	Albert Stephens
4.8	7S	2E	24	NE¼ NW¼	Mrs. W. A. Wilson
20.6	7S	2E	24	SW¼ NW¼	" " " "
38.6	7S	2E	24	SE¼ NW¼	" " " "
29.8	7S	2E	24	NE¼ SW¼	" " " "
28.8	7S	2E	24	NW¼ SW¼	" " " "
4.0	7S	2E	24	NW¼ SW¼	J. C. Johns
8.0	7S	2E	24	SW¼ SW¼	Mrs. W. A. Wilson
28.7	7S	2E	24	SW¼ SW¼	J. C. Johns
8.7	7S	2E	24	SE¼ SW¼	" " "
33.3	7S	2E	24	SE¼ SW¼	Mrs. W. A. Wilson
37.0	7S	2E	24	NE¼ SE¼	Mrs. J. S. Miles
1.8	7S	2E	24	NW¼ SE¼	" " "
37.3	7S	2E	24	NW¼ SE¼	Albert Stephens
28.0	7S	2E	24	SW¼ SE¼	Leslie W. Layton
34.8	7S	2E	24	SE¼ SE¼	" " "
38.2	7S	2E	25	NE¼ NE¼	P. H. Freudenthal
12.8	7S	2E	25	NW¼ NE¼	" " "
18.2	7S	2E	25	SE¼ NE¼	" " "

TABLE No. 2 (Continued)
San Jose Canal—Lands and parties affected by priorities antedating 1906.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
27.9	7S	2E	25	NE¼ NW¼	Henry Clifford, Sr.
25.4	7S	2E	25	NW¼ NW¼	" " "
7.9	7S	2E	26	NE¼ NE¼	" " "
18.0	7S	2E	26	NE¼ NW¼	George Foote
5.1	7S	2E	26	NE¼ NW¼	Mrs. Margaret R. Kempton
28.0	7S	2E	26	NW¼ NW¼	" " "
13.7	7S	2E	27	NE¼ NE¼	William Ellsworth
23.6	7S	2E	27	NW¼ NE¼	" " "
23.2	7S	2E	27	NE¼ NW¼	" " "
18.6	7S	2E	27	NW¼ NW¼	" " "
18.0	7S	2E	28	NE¼ NE¼	Calvin Hacker
34.8	7S	2E	9	NE¼ SE¼	S. N. Holman
9.7	7S	2E	9	NW¼ SE¼	" " "
34.3	7S	2E	9	SW¼ SE¼	" " "
38.0	7S	2E	9	SE¼ SE¼	" " "
1.4	7S	2E	10	NE¼ NW¼	Ammon Curtis
18.7	7S	2E	10	SW¼ NW¼	(Ammon Curtis & Thomas
1.8	7S	2E	10	SE¼ NW¼	Gardner
22.3	7S	2E	10	NW¼ SW¼	" "
22.4	7S	2E	10	SW¼ SW¼	" "
2.7	7S	2E	15	NW¼ NW¼	Ammon Curtis
1.3	7S	2E	15	NE¼ NE¼	Pedro Bartolda
4.3	7S	2E	15	NE¼ NE¼	Elias Flores
22.4	7S	2E	15	NE¼ NE¼	Castulo Garcia
6.5	7S	2E	15	NE¼ NE¼	Inocencio Bartolda
18.6	7S	2E	15	NW¼ NE¼	Castulo Garcia
23.9	7S	2E	15	NW¼ NE¼	Inocencio Bartolda
6.2	7S	2E	15	NW¼ NE¼	Severo Bartolda
8.7	7S	2E	15	SW¼ NE¼	Inocencio Bartolda
6.4	7S	2E	15	SW¼ NE¼	Severo Bartolda
6.1	7S	2E	15	SW¼ NE¼	Jesus Montes
1.4	7S	2E	15	NE¼ NW¼	S. N. Holman
18.6	7S	2E	15	NE¼ NW¼	Inocencio Bartolda
11.4	7S	2E	15	NE¼ NW¼	Severo Bartolda
18.0	7S	2E	15	NE¼ NW¼	Jesus Montes
4.0	7S	2E	15	NW¼ NW¼	S. N. Holman
0.2	7S	2E	15	NW¼ NW¼	Severo Bertolda
7.8	7S	2E	15	NW¼ NW¼	Jesus Montes
8.4	7S	2E	15	NW¼ NW¼	Rosario Alvillar
2.8	7S	2E	15	NW¼ NW¼	Quelmire Garcia
2.4	7S	2E	15	NW¼ NW¼	Tomas Garcia
1.9	7S	2E	15	SW¼ NW¼	Rosario Alvillar
22.6	7S	2E	15	SW¼ NW¼	Casimiro Garcia
12.4	7S	2E	15	SW¼ NW¼	Tomas Garcia
1.9	7S	2E	15	SE¼ NW¼	Severo Bartolda
14.6	7S	2E	15	SE¼ NW¼	Jesus Montes
16.8	7S	2E	15	SE¼ NW¼	Rosario Alvillar
0.7	7S	2E	15	SE¼ NW¼	Augustin Franco
0.1	7S	2E	15	SE¼ NW¼	Anastacio Quiroz
4.2	7S	2E	15	SE¼ NW¼	Casimiro Garcia
0.7	7S	2E	15	SE¼ NW¼	Jose B. Garcia
2.3	7S	2E	15	NE¼ SW¼	" " "
2.0	7S	2E	15	NE¼ SW¼	Rosario Alvillar
1.1	7S	2E	15	NE¼ SW¼	Mrs. S. C. Gonzalez
2.2	7S	2E	15	NE¼ SW¼	Francisco Montes
1.2	7S	2E	15	NE¼ SW¼	Rafael Garcia

TABLE No. 2 (Continued)
San Jose Canal—Lands and parties affected by priorities antedating 1906.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
6.8	7S	2E	15	NW¼ SW¼	Carnaby Garcia
0.2	7S	2E	15	NW¼ SW¼	Rafael Garcia
14.4	7S	2E	15	NW¼ SW¼	Tomas Garcia
1.6	7S	2E	15	NW¼ SW¼	Juan Garcia
1.8	7S	2E	17	NE¼ NE¼	Marcel Larsen
32.0	7S	2E	17	SW¼ NE¼	Ida Tidwell
28.2	7S	2E	17	SE¼ NE¼	Marcel Larsen
19.4	7S	2E	17	SE¼ NW¼	Tomas Garcia
38.8	7S	2E	17	NE¼ SW¼	William H. Gillespie
24.6	7S	2E	17	NW¼ SW¼	Mrs. Jesus Carrasco
7.3	7S	2E	17	NW¼ SW¼	O. A. Bryce
37.3	7S	2E	17	SW¼ SW¼	" " "
2.7	7S	2E	17	SW¼ SW¼	Mrs. Jesus Carrasco
6.9	7S	2E	17	SE¼ SW¼	William H. Gillespie
31.8	7S	2E	17	SW¼ SW¼	A. T. Pelloat
38.7	7S	2E	17	NE¼ SE¼	Marcel Larsen
37.2	7S	2E	17	NW¼ SE¼	Ida Tidwell
L.8	7S	2E	17	SW¼ SE¼	Marcelida Garcia
38.0	7S	2E	17	SW¼ SE¼	Jesus Garica
2.2	7S	2E	17	SE¼ SE¼	" "
2.1	7S	2E	17	SE¼ SE¼	Marcelida Garcia
20.7	7S	2E	17	SE¼ SE¼	Fernando Carrasco
4.7	7S	2E	18	SW¼ NE¼	George C. Evans
7.2	7S	2E	18	SE¼ NE¼	Mrs. Jesus Carrasco
18.0	7S	2E	19	SW¼ SW¼	F. M. Woodward
12.1	7S	2E	18	NE¼ SE¼	George C. Evans
20.8	7S	2E	18	NE¼ SE¼	Mrs. Jesus Carrasco
37.0	7S	2E	18	NW¼ SE¼	George C. Evans
37.5	7S	2E	18	SW¼ SE¼	" " "
12.2	7S	2E	18	SE¼ SE¼	" " "
28.2	7S	2E	18	SE¼ SE¼	Mrs. Jesus Carrasco
33.3	7S	2E	19	NE¼ NE¼	George L. Hatch
10.1	7S	2E	19	NW¼ NE¼	" "
12.9	7S	2E	19	NW¼ NE¼	W. W. Chapman
7.0	7S	2E	19	NW¼ NE¼	George C. Evans
7.8	7S	2E	19	NW¼ NE¼	Luther Farley
1.9	7S	2E	19	NW¼ NE¼	F. M. Woodward
18.5	7S	2E	19	SW¼ NE¼	John W. Mattles
28.0	7S	2E	19	SE¼ NE¼	P. H. Freudenthal
10.1	7S	2E	19	NE¼ NW¼	F. M. Woodward
6.5	7S	2E	19	NE¼ NW¼	Luther Farley
8.7	7S	2E	19	NE¼ NW¼	Juan Martinez
16.0	7S	2E	19	NE¼ NW¼	Pedro Bertolda
20.0	7S	2E	19	NW¼ NW¼	" "
0.3	7S	2E	19	SW¼ NW¼	Pablo Chavarria
0.0	7S	2E	19	SW¼ NW¼	Estacio Cevallos
0.0	7S	2E	19	SW¼ NW¼	Reynaldo Elias
0.0	7S	2E	19	SW¼ NW¼	Victorino Olivas
0.0	7S	2E	19	SW¼ NW¼	Manuel Meadet
0.0	7S	2E	19	SW¼ NW¼	Miguel Encinas
0.0	7S	2E	19	SW¼ NW¼	S. Moreno
0.0	7S	2E	19	SW¼ NW¼	Mrs. M. Michelena
0.3	7S	2E	19	SW¼ NW¼	Jose Villareal
2.1	7S	2E	19	SW¼ NW¼	Lito Rios
L.0	7S	2E	19	SW¼ NW¼	Jose Figueroa
10.0	7S	2E	19	SW¼ NW¼	Town of Solomonville

187

TABLE No. 2 (Continued)
San Juan Canal—Lands and parties affected by priorities antedating 1903.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
1.3	37S	10	SW¼ NW¼	W. G. Richards
2.1	37S	10	SW¼ NW¼	Louis Mielsiess
6.9	37S	10	SW¼ NW¼	Mrs. L. A. Massey & J. T. Massey
22.1	37S	10	SE¼ NW¼	John C. Epley
25.7	37S	12	NE¼ SW¼	" "
37.4	37S	10	NW¼ SW¼	" "
24.0	37S	10	SW¼ SW¼	(Mrs. L. A. Massey & J. T. Massey
21.4	37S	10	SE¼ SW¼	John C. Epley
25.9	37S	10	NE¼ SE¼	F. H. Freudenthal
24.6	37S	12	NW¼ SE¼	John W. Mathis
10.1	37S	12	SW¼ SE¼	" "
1.3	37S	20	NE¼ NE¼	G. Garcia
1.9	37S	20	NE¼ NE¼	Ed Hicks
24.6	37S	20	NW¼ NE¼	" "
14.4	37S	20	SW¼ NE¼	W. G. Richards
26.0	37S	20	NE¼ NW¼	A. T. Pollock
24.3	37S	20	NW¼ NW¼	G. A. Pryce
12.1	37S	20	SW¼ NW¼	W. G. Richards
20.6	37S	20	SE¼ NW¼	" "
9.3	37S	20	NE¼ SW¼	Mathews Stuart
11.0	37S	20	NW¼ SW¼	W. G. Richards
4.8	37S	20	NE¼ NW¼	Emory Adelbert Curtis
11.1	37S	40	NW¼ NW¼	H. L. Alexander
36.4	37S	20	NW¼ NW¼	Amelia Fuller
4.8	37S	40	SW¼ NW¼	" "
20.0	37S	20	SW¼ NW¼	H. L. Alexander
9.1	37S	20	SE¼ NW¼	Emory Adelbert Curtis

TABLE No. 3
Tidwell Canal—Lands and parties affected by priorities antedating 1903.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
6.6	37S	2E	12	SE¼ SE¼	(John Tidwell & E. L.
1.0	37S	2E	12	NE¼ NE¼	(Tidwell, Jr., Administra-
6.9	37S	2E	7	NE¼ SW¼	(tors of the Estate of
21.3	37S	2E	7	SW¼ SW¼	(E. L. Tidwell, deceased.
30.9	37S	2E	7	SE¼ SW¼	" " "
0.3	37S	2E	7	NW¼ SE¼	" " "
31.5	37S	2E	7	SW¼ SE¼	" " "
32.7	37S	2E	7	SE¼ SE¼	" " "
0.4	37S	2E	8	SW¼ NE¼	" " "
10.1	37S	2E	8	NE¼ NE¼	" " "
7.6	37S	2E	8	SW¼ SW¼	" " "
4.2	37S	2E	8	SE¼ SW¼	" " "
27.4	37S	2E	8	NE¼ SE¼	" " "
24.4	37S	2E	8	NW¼ SE¼	" " "
27.2	37S	2E	8	SW¼ SE¼	" " "
27.1	37S	2E	8	SE¼ SE¼	" " "
7.0	37S	2E	17	NW¼ NE¼	Rafael Garcia
14.8	37S	2E	17	NE¼ NW¼	" "
8.8	37S	2E	17	NW¼ NW¼	" "
8.1	37S	2E	17	NW¼ NW¼	(John Tidwell & E. L.
27.1	37S	2E	18	NE¼ NE¼	(Tidwell, Jr., Administra-
24.0	37S	2E	18	NW¼ NE¼	(tors of the Estate of
33.6	37S	2E	18	NE¼ NW¼	(E. L. Tidwell, deceased.
21.0	37S	2E	19	NW¼ NW¼	" " "

TABLE No. 4
Union Canal—Lands and parties affected by priorities antedating 1903.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
6.0	3S	24E	13	SW¼ SE¼	I. B. Hicks
6.8	3S	24E	23	SE¼ SE¼	Nicholas J. Roseberry
1.2	3S	24E	24	SE¼ SE¼	A. Harper
1.8	3S	24E	25	SE¼ SE¼	H. J. Andersen
30.0	3S	24E	24	NW¼ NE¼	Milton Lieon
4.6	3S	24E	25	NE¼ NE¼	Reece D. Green
8.2	3S	24E	25	SE¼ NE¼	Charles Norby
4.0	3S	24E	24	NE¼ SE¼	Charles Rogers
4.8	3S	24E	25	NE¼ SE¼	F. C. Merrill
28.9	3S	24E	24	NW¼ NW¼	W. A. Lipes
7.9	3S	24E	30	SW¼ SW¼	William Larsen
2.0	3S	24E	29	SW¼ SW¼	G. W. Miller
2.5	3S	24E	29	SW¼ SW¼	Mrs. Layman Dodge
4.6	3S	24E	29	SW¼ SW¼	M. M. Curtis
4.4	3S	24E	29	SW¼ SW¼	George A. Hoopes
1.1	3S	24E	29	SW¼ NE¼	E. C. Phillips
12.7	3S	24E	29	NW¼ SE¼	Thomas S. Kimball
24.6	3S	24E	29	SW¼ SE¼	" "
24.2	3S	24E	28	SE¼ SE¼	Orvil Larsen
4.2	3S	24E	33	NE¼ SW¼	J. D. Kenelayn
4.8	3S	24E	33	NW¼ SW¼	" "
17.4	3S	24E	33	SW¼ SW¼	H. L. Norton, Jr.
16.0	3S	24E	33	SW¼ SW¼	J. E. Norton
11.4	3S	24E	33	SW¼ SW¼	William R. Norton
4.6	3S	24E	33	SE¼ SW¼	J. E. Norton
12.3	3S	24E	33	SE¼ SW¼	William R. Norton
2.9	3S	24E	33	SE¼ SW¼	Lawrence Watson
7.7	3S	24E	33	SW¼ SE¼	J. N. Alfred
11.8	3S	24E	33	SW¼ SE¼	William Higler
2.7	3S	24E	33	SE¼ SE¼	R. F. Williams, Jr.
12.7	3S	24E	33	SE¼ SE¼	D. T. Adams
				NW¼ NE¼	F. C. Merrill, Administrator of the estate of Jos Pensyl, deceased.
37.8	3S	23E	28	SW¼ NE¼	Joseph Alder
7.1	3S	23E	28	SE¼ NE¼	(F. C. Merrill, Administra-
34.7	3S	23E	27	NE¼ NW¼	(tor of the estate of Jos Pensyl, deceased.
4.7	3S	23E	27	NE¼ NW¼	C. J. Farrington
2.0	3S	23E	27	NE¼ NW¼	Mrs. A. E. Rush
1.7	3S	23E	27	NE¼ NW¼	Arizona Eastern Railroad Company
2.6	3S	23E	27	NE¼ NW¼	Joseph Alder
5.7	3S	23E	27	NW¼ NW¼	Charles Lester
6.3	3S	23E	27	NW¼ NW¼	Mrs. Nida Lindsey
21.1	3S	23E	27	NW¼ NW¼	Joseph Alder
12.3	3S	23E	27	SW¼ NW¼	" "
2.8	3S	23E	27	SW¼ NW¼	Mrs. Nida Lindsey
2.6	3S	23E	27	SE¼ NW¼	F. C. Merrill, Administrator of the estate of Jos Pensyl, deceased.
27.2	3S	23E	28	SE¼ NW¼	Joseph Alder
20.8	3S	23E	28	NE¼ SW¼	" "
11.7	3S	23E	28	NE¼ SW¼	" "
24.8	3S	23E	28	NW¼ SE¼	" "
28.0	3S	23E	28	SW¼ SE¼	" "

Table No. 4 (Continued)
Union Canal—Lands and parties affected by priorities antedating 1904.

Number of acres	Lands: Described by reference to G. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
4.5	26	25E	29	SE¼ SE¼	J. E. Norton
20.3	26	25E	29	SE¼ SE¼	William R. Norton
4.3	26	25E	29	SE¼ SE¼	E. L. Norton, Jr.
14.1	26	25E	30	NE¼ NE¼	Milton Gelins
9.2	26	25E	30	NE¼ NE¼	Joseph Alder
4.1	26	25E	30	SE¼ NE¼	" "
1.9	26	25E	30	NE¼ NW¼	John Cluff
80.0	26	25E	30	and 19	Town of Pima
37.9	26	25E	30	NE¼ NE¼	E. R. Toney, Jr.
2.9	26	25E	31	NW¼ NE¼	Joseph Alder
22.1	26	25E	33	SE¼ NE¼	H. W. Layton
11.6	26	25E	33	NE¼ SE¼	L. A. Adams
2.6	26	25E	33	NE¼ NE¼	B. F. Cluff
14.8	26	25E	33	NE¼ NW¼	J. D. Wash
4.8	26	25E	33	NW¼ NE¼	E. M. Tate
7.8	26	25E	33	NE¼ NW¼	Mrs. J. E. Cluff
4.5	26	25E	33	NW¼ NE¼	Mrs. Mildred Whitmer
4.4	26	25E	33	NW¼ NE¼	William Bigler
8.3	26	25E	33	NW¼ NE¼	B. F. Whitmer, Sr.
18.2	26	25E	33	NW¼ NE¼	George A. Bigler
7.6	26	25E	33	SW¼ NE¼	J. W. Sewell
2.1	26	25E	33	SW¼ NE¼	E. F. Jenkins
1.7	26	25E	33	SW¼ NE¼	School District #12, County of Graham, State of Arizona.
2.7	26	25E	33	SW¼ NE¼	E. L. Jenkins
2.1	26	25E	33	SW¼ NE¼	Quenn Cheshire
2.9	26	25E	33	SW¼ NE¼	Benjamin F. Cluff, Administrator of the estates of Joseph Cluff, deceased and Phoebe Cluff, deceased.
1.8	26	25E	33	SW¼ NE¼	Mrs. J. E. Cluff
2.8	26	25E	33	SW¼ NE¼	L. A. Adams
4.0	26	25E	33	SE¼ NE¼	B. F. Cluff
12.8	26	25E	33	SE¼ NE¼	Benjamin F. Cluff, Administrator of the estate of Joseph Cluff, deceased.
2.7	26	25E	33	SE¼ NE¼	Mrs. D. E. Smith
2.3	26	25E	33	SE¼ NE¼	Mrs. W. E. Craig
4.6	26	25E	33	SE¼ NE¼	J. M. Smith
2.3	26	25E	33	NE¼ NW¼	G. L. Coombs
16.9	26	25E	33	NE¼ NW¼	William Coombs
1.7	26	25E	33	NE¼ NW¼	E. L. Norton, Jr.
10.1	26	25E	33	NE¼ NW¼	George M. Sheets
2.1	26	25E	33	NE¼ NW¼	J. E. Schurtz
2.9	26	25E	33	NE¼ NW¼	B. F. Porter
2.2	26	25E	33	NE¼ NW¼	J. E. Norton
14.9	26	25E	33	NW¼ NW¼	George M. Sheets
18.9	26	25E	33	NW¼ NW¼	Lloyd Norton
32.4	26	25E	33	NW¼ NW¼	Lewis Coombs
4.8	26	25E	33	SE¼ NW¼	B. F. Porter
4.4	26	25E	33	SE¼ NW¼	A. J. Shillet
4.4	26	25E	33	SE¼ NW¼	E. M. Alford
1.1	26	25E	33	SE¼ NW¼	J. E. Shillet
1.0	26	25E	33	SE¼ NW¼	Clarence Martin
5.6	26	25E	33	SE¼ NW¼	Mrs. Charlotte F. Elmer
2.1	26	25E	33	SW¼ NE¼	J. N. Allred
12.5	26	25E	33	SE¼ NW¼	William Coombs
16.6	26	25E	33	NE¼ SW¼	Millard Fyfe
4.0	26	25E	33	NE¼ SW¼	H. M. Layton
11.3	26	25E	33	NE¼ SW¼	William Coombs
16.1	26	25E	33	NW¼ SW¼	H. W. Layton
31.8	26	25E	33	NW¼ SW¼	" " "
10.7	26	25E	33	SW¼ SW¼	" " "
28.9	26	25E	33	SE¼ SW¼	" " "
14.3	26	25E	33	SE¼ SW¼	William Coombs
1.7	26	25E	33	NE¼ SE¼	H. L. Norton, Jr.
16.6	26	25E	33	NE¼ SE¼	H. D. Smith
18.3	26	25E	33	NE¼ SE¼	David Dodge
24.1	26	25E	33	NW¼ SE¼	M. P. Ferguson
7.7	26	25E	33	NW¼ SE¼	N. E. Coombs
0.4	26	25E	34	SW¼ SE¼	" "
37.3	26	25E	33	SW¼ SE¼	F. A. Webster
1.5	26	25E	33	SW¼ SE¼	M. P. Ferguson
28.4	26	25E	33	SE¼ SE¼	H. L. Norton, Sr.
22.3	26	25E	34	NE¼ NE¼	L. C. Cutler
14.7	26	25E	34	NE¼ NE¼	Roy A. Layton
22.6	26	25E	34	NW¼ NE¼	L. C. Cutler
29.7	26	25E	34	NW¼ NE¼	A. C. Lamoreaux
27.8	26	25E	34	SE¼ NE¼	D. C. Johnson
9.0	26	25E	34	NE¼ NW¼	J. R. Martin
21.1	26	25E	34	NW¼ NW¼	J. D. Webb
4.9	26	25E	34	SW¼ NW¼	B. F. Cluff
14.9	26	25E	34	SW¼ NW¼	Benjamin F. Cluff, Administrator of the estates of Joseph Cluff, deceased and Phoebe Cluff, deceased.
28.2	26	25E	34	SW¼ NW¼	Mrs. W. F. Martin
22.9	26	25E	34	SE¼ NW¼	J. R. Martin
4.7	26	25E	34	SE¼ NW¼	J. E. Martin
20.1	26	25E	34	NE¼ SW¼	" " "
13.1	26	25E	34	NE¼ SW¼	J. M. Smith
28.8	26	25E	34	NW¼ SW¼	" " "
35.0	26	25E	34	SW¼ SW¼	E. M. Lambert
12.9	26	25E	34	SE¼ SW¼	" "
24.6	26	25E	34	SE¼ SW¼	Omer C. Layton
40.0	26	25E	34	NW¼ SE¼	Roy A. Layton
24.8	26	25E	34	NW¼ SE¼	M. M. Smith
24.6	26	25E	34	SW¼ SE¼	" " "
28.2	26	25E	34	SE¼ SE¼	Roy A. Layton
4.9	26	25E	35	SW¼ NE¼	Willis E. Daly
8.7	26	25E	35	NW¼ NW¼	Antonio Venegas
24.8	26	25E	35	NW¼ NW¼	Mrs. Artie Bingam
0.8	26	25E	35	SW¼ NW¼	" "
10.8	26	25E	35	SW¼ NW¼	L. S. Branam
6.0	26	25E	35	SE¼ NW¼	Antonio Venegas
22.3	26	25E	35	SE¼ NW¼	James H. Porter
18.0	26	25E	35	NE¼ SW¼	" "
19.8	26	25E	35	NW¼ SW¼	W. R. Chambers
4.3	26	25E	35	NW¼ SW¼	James H. Porter
1.1	26	25E	35	NW¼ SW¼	W. R. Chambers
23.0	26	25E	35	NW¼ SW¼	W. E. Platt
11.0	26	25E	35	SW¼ SW¼	" "
22.1	26	25E	36	SW¼ SW¼	Mrs. Lily Duke
1.0	26	25E	36	SE¼ SW¼	Antone Chereon
2.0	26	25E	36	SE¼ SW¼	Miguel Mena
8.0	26	25E	36	SE¼ SW¼	Damacio O. Myres
8.7	26	25E	36	SE¼ SW¼	Marcel Burrell
2.0	26	25E	36	SE¼ SW¼	W. E. Platt
17.8	26	25E	36	SE¼ SW¼	Rodger Phillips
21.4	26	25E	36	NE¼ SE¼	Frank N. Tyler
24.5	26	25E	36	NW¼ SE¼	Willie K. Daly
12.8	26	25E	36	SW¼ SE¼	Mrs. Julia Daly
18.4	26	25E	36	SW¼ SE¼	Seth P. Fletcher
32.9	26	25E	36	SE¼ SE¼	" "
0.4	26	25E	36	NW¼ SW¼	Ephriam J. Allen
12.7	26	25E	36	SW¼ SW¼	" "
20.0	26	25E	1	SW¼ SE¼	W. R. Chambers
20.0	26	25E	1	NW¼ NW¼	Seth P. Fletcher
24.4	26	25E	1	SW¼ NW¼	" " "
4.4	26	25E	1	SW¼ NW¼	" " "
8.0	26	25E	1	SW¼ NW¼	Town of Thatcher
24.3	26	25E	1	SW¼ NW¼	Mrs. C. R. Pace
32.6	26	25E	1	SW¼ NW¼	" " "
4.4	26	25E	1	SW¼ NW¼	Seth P. Fletcher
40.0	26	25E	1	NW¼ SW¼	Bart Hoopes
16.0	26	25E	1	NW¼ SW¼	Town of Thatcher
20.0	26	25E	1	NW¼ SW¼	Sarah A. Hunt
18.1	26	25E	1	SW¼ SW¼	" "
18.0	26	25E	1	SW¼ SW¼	Town of Thatcher
28.1	26	25E	1	SW¼ SW¼	Bart Hoopes
21.0	26	25E	1	NW¼ NE¼	W. R. Chambers
24.4	26	25E	1	NW¼ SE¼	" " "
11.8	26	25E	1	NW¼ SE¼	Bart Hoopes
8.0	26	25E	1	SW¼ SE¼	" "
20.3	26	25E	1	SW¼ SE¼	D. C. Johnson
1.3	26	25E	1	SW¼ SE¼	W. E. Chambers
7.0	26	25E	1	SW¼ SE¼	A. C. Hunt
21.0	26	25E	1	SE¼ SE¼	" " "
8.4	26	25E	1	SE¼ SE¼	W. R. Chambers
28.5	26	25E	2	NE¼ NE¼	Frank N. Tyler
28.2	26	25E	2	NW¼ NE¼	Orlando Jolly
18.9	26	25E	2	SW¼ NE¼	" "
18.6	26	25E	2	SW¼ NE¼	Town of Thatcher
18.8	26	25E	2	SE¼ NE¼	Frank N. Tyler
18.8	26	25E	2	SE¼ NE¼	Town of Thatcher
8.4	26	25E	2	NE¼ NW¼	James H. Porter
0.2	26	25E	2	NE¼ NW¼	Rodger Phillips
9.7	26	25E	2	NE¼ NW¼	J. M. Moody
8.6	26	25E	2	NE¼ NW¼	A. C. Lamoreaux
8.8	26	25E	2	NE¼ NW¼	W. E. Platt
8.8	26	25E	2	NW¼ NW¼	" "
14.4	26	25E	2	NW¼ NW¼	George A. Hoopes
14.9	26	25E	2	NW¼ NW¼	Roy A. Layton
14.1	26	25E	2	SW¼ NW¼	" "
4.8	26	25E	2	SW¼ NW¼	W. E. Platt
8.3	26	25E	2	SW¼ NW¼	George A. Hoopes
18.8	26	25E	2	SW¼ NW¼	Town of Thatcher

TABLE No. 4 (Continued)
Union Canal—Lands and parties affected by priorities established 1905.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction required herein.
4.9	7S	24E	1	SE¼ NW¼	W. E. Platt
4.7	7S	24E	2	SE¼ NW¼	A. G. Lamoreaux
4.8	7S	24E	2	SE¼ NW¼	J. M. Moody
4.3	7S	24E	2	SE¼ NW¼	James M. Porter
36.0	7S	25E	2	SE¼ NW¼	Town of Thatcher
10.6	7S	25E	2	NE¼ SW¼	" " "
10.0	7S	25E	2	NW¼ SW¼	" " "
4.0	7S	25E	2	SW¼ SW¼	" " "
4.0	7S	25E	2	SE¼ SW¼	" " "
10.0	7S	25E	2	NE¼ SE¼	" " "
10.0	7S	25E	2	NW¼ SE¼	" " "
10.0	7S	25E	2	SW¼ SE¼	" " "
10.0	7S	25E	2	SE¼ SE¼	" " "
37.4	7S	26E	2	NE¼ NW¼	Miles Story
14.8	7S	26E	2	NW¼ NW¼	Mable Perkins
28.0	7S	26E	2	NW¼ NE¼	Oscar G. Layton
14.8	7S	26E	2	SW¼ NE¼	Lorenzo Smith
.2	7S	26E	2	SW¼ NE¼	Oscar G. Layton
14.1	7S	26E	2	SW¼ NW¼	Otsiepa Bank
14.8	7S	26E	2	SE¼ NE¼	Mrs. Hester Downes
9.1	7S	26E	2	SE¼ NE¼	Miles Story
4.0	7S	26E	2	SE¼ NE¼	Town of Thatcher
19.4	7S	26E	2	NE¼ NW¼	W. W. Penn
27.2	7S	26E	2	NW¼ NW¼	Mrs. J. R. Cluff
34.3	7S	26E	2	SW¼ NW¼	F. A. Webster
11.1	7S	26E	2	SW¼ NW¼	C. P. Pollock
24.4	7S	26E	2	SW¼ NW¼	W. W. Penn
14.6	7S	26E	2	SE¼ NW¼	L. J. Palmer
.2	7S	26E	2	SE¼ NW¼	W. W. Penn
14.3	7S	26E	2	NE¼ SW¼	Rodger Phillips
18.7	7S	26E	2	NW¼ SW¼	Oscar G. Layton
28.0	7S	26E	2	NE¼ SW¼	L. J. Palmer
24.8	7S	26E	2	NW¼ SW¼	W. W. Penn
.2	7S	26E	2	SW¼ SW¼	" " "
.2	7S	26E	2	SE¼ SW¼	L. J. Palmer
7.7	7S	26E	2	SE¼ SW¼	Mrs. Wm. Lindsay
1.8	7S	26E	2	SE¼ SW¼	Oscar G. Layton
4.4	7S	26E	2	SE¼ SW¼	Elsie L. Orvis
3.4	7S	26E	2	SE¼ SW¼	J. A. Farley
14.0	7S	26E	2	NE¼ SE¼	Town of Thatcher
14.9	7S	26E	2	NE¼ SE¼	A. V. Tate
14.9	7S	26E	2	NW¼ SE¼	Manuela Perkins
14.0	7S	26E	2	NW¼ SE¼	Otsiepa Bank
4.4	7S	26E	2	SW¼ SE¼	Agnes G. Phillips
.2	7S	26E	2	SW¼ SE¼	" " "
1.0	7S	26E	2	SE¼ SE¼	Manuela Perkins
4.2	7S	26E	2	SW¼ SE¼	C. M. Hendricks
.2	7S	26E	2	SW¼ SE¼	L. J. Palmer
4.8	7S	26E	2	SW¼ SE¼	Mrs. Sophia Barney
14.0	7S	26E	2	SE¼ SE¼	Town of Thatcher
1.3	7S	26E	2	SE¼ SE¼	A. V. Tate
4.8	7S	26E	2	SE¼ SE¼	W. A. Peay, Administrator of the estate of Orson Elliott, deceased.

TABLE No. 4 (Continued)
Union Canal—Lands and parties affected by priorities established 1905.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction required herein.
2.2	7S	24E	3	SE¼ SE¼	W. A. Peay
10.2	7S	25E	3	SE¼ SE¼	" " "
27.5	7S	24E	4	NW¼ NE¼	F. A. Webster
8.0	7S	25E	4	NE¼ NE¼	O. P. Webster
32.0	7S	24E	4	SW¼ NE¼	(O. P. Webster, Administrator of the estate of Thomas G. Webster, deceased.
23.0	7S	24E	4	SE¼ NE¼	O. P. Webster
4.7	7S	25E	4	SE¼ NE¼	O. P. Webster, Administrator of the Estate of Thomas G. Webster, deceased.
23.7	7S	24E	4	NE¼ NW¼	M. M. Layton
3.9	7S	24E	4	SE¼ NW¼	" " "
18.3	7S	24E	4	NE¼ SE¼	William Webster
4.0	7S	26E	10	NE¼ NE¼	W. A. Peay
12.0	7S	24E	11	NE¼ NE¼	Town of Thatcher
22.7	7S	24E	12	NE¼ NE¼	D. C. Johnson
17.0	7S	24E	12	NE¼ NE¼	George Monteith
37.7	7S	24E	12	NW¼ NE¼	Mrs. William Johns
9.4	7S	24E	12	NW¼ NE¼	Ethel Blain
31.4	7S	25E	12	SW¼ NE¼	Mrs. William Johns
12.8	7S	24E	12	SW¼ NE¼	Ethel Blain
8.4	7S	24E	12	SW¼ NE¼	F. J. Jacobsen
2.3	7S	24E	12	SW¼ NE¼	R. G. Layton, Jr.
8.4	7S	24E	12	SE¼ NE¼	D. C. Johnson
34.2	7S	24E	12	SE¼ NE¼	George Monteith
13.2	7S	25E	12	SE¼ NE¼	George A. Gourley
1.8	7S	24E	12	SE¼ NE¼	R. G. Layton, Jr.
30.1	7S	24E	12	NE¼ NW¼	David Johns
1.9	7S	25E	12	NE¼ NW¼	A. C. Hunt
18.7	7S	24E	12	NW¼ NW¼	Miss. Arthusa Kemps
7.8	7S	24E	12	NW¼ NW¼	Miss. Sarah S. Elmer
1.7	7S	24E	12	NW¼ NW¼	" " "
2.0	7S	25E	12	NW¼ NW¼	" " "
12.9	7S	24E	13	NW¼ NW¼	H. B. Harms
					Edith Allred, Della Allred, Pauline Allred, Eldon Allred and Edith M. Allred
4.4	7S	24E	13	NW¼ NW¼	Town of Thatcher
8.3	7S	24E	13	SW¼ NW¼	Mrs. Sarah S. Elmer
19.3	7S	24E	13	SE¼ NW¼	C. R. Moten
3.4	7S	24E	13	NE¼ SW¼	Mrs. Isabella Penn
4.8	7S	24E	13	NE¼ SE¼	George A. Gourley
28.9	7S	24E	13	NE¼ SE¼	R. G. Layton, Jr.
27.9	7S	24E	13	NW¼ SE¼	" " "
4.0	7S	24E	13	NW¼ SE¼	P. J. Jacobsen
4.8	7S	24E	13	SW¼ SE¼	R. G. Layton, Jr.
28.2	7S	24E	13	SE¼ SE¼	" " "
2.0	7S	24E	18	NE¼ NE¼	J. D. Lee
8.2	7S	24E	18	NE¼ NE¼	R. G. Layton, Jr.
4.8	7S	24E	18	NW¼ NE¼	J. D. Lee
22.4	7S	25E	7	NE¼ NW¼	H. E. Hoopes & John L. Hoopes
21.6	7S	24E	7	NW¼ NW¼	Charles P. Johns
14.1	7S	24E	7	NW¼ NW¼	P. Estrada
14.1	7S	24E	7	SW¼ NW¼	" " "
31.3	7S	24E	7	SW¼ NW¼	Charles P. Johns

TABLE No. 4 (Continued)
Union Canal—Lands and parties affected by priorities established 1905.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction required herein.
20.7	7S	24E	7	SE¼ NW¼	H. E. Hoopes & John L. Hoopes
27.6	7S	24E	7	NE¼ SW¼	" " "
22.1	7S	24E	7	NW¼ SW¼	Charles P. Johns
11.1	7S	24E	7	NW¼ SW¼	P. Estrada
25.5	7S	24E	7	SW¼ SW¼	Charles P. Johns
28.6	7S	24E	7	SE¼ SW¼	H. E. Hoopes & John L. Hoopes
32.0	7S	24E	7	NE¼ SE¼	Town of Safford
14.8	7S	24E	7	NW¼ SE¼	P. J. Jacobsen
18.9	7S	24E	7	NW¼ SE¼	C. E. Crandall
7.2	7S	24E	7	SW¼ SE¼	W. E. Platt
1.0	7S	24E	7	SW¼ SE¼	Heber M. Higgins
1.9	7S	24E	7	SW¼ SE¼	Hattie Graham
7.4	7S	24E	7	SW¼ SE¼	T. D. Barry
17.4	7S	24E	7	SW¼ SE¼	C. W. Bigler
2.0	7S	24E	7	SW¼ SE¼	Charles Kruger
31.3	7S	24E	7	SE¼ SE¼	Town of Safford
4.0	7S	26E	8	NE¼ SW¼	" " "
12.3	7S	26E	8	NW¼ SW¼	" " "
34.2	7S	26E	8	SW¼ SW¼	" " "
22.0	7S	26E	8	SE¼ SW¼	" " "
27.2	7S	26E	8	NE¼ SE¼	Henry Clifford, Sr.
8.8	7S	26E	8	NW¼ SE¼	" " "
5.1	7S	26E	8	NW¼ SE¼	C. S. Conway
1.7	7S	26E	8	NW¼ SE¼	Mrs. J. C. Warnick
1.8	7S	26E	8	SW¼ SE¼	" " "
36.6	7S	26E	8	SE¼ SE¼	Henry Clifford, Sr.
10.0	7S	26E	8	SW¼ SE¼	C. S. Conway
4.4	7S	26E	8	SW¼ SE¼	Town of Safford
36.7	7S	26E	8	SE¼ SE¼	Henry Clifford, Sr.
1.4	7S	26E	9	SW¼ NE¼	Charles M. Pursley and Robert L. Nash
40.0	7S	26E	9	SW¼ NW¼	R. D. Crandall
23.8	7S	26E	9	SE¼ NW¼	" " "
15.0	7S	26E	9	NE¼ SW¼	Charles Gleis
20.8	7S	26E	9	NW¼ SW¼	Fred Waughtal
28.7	7S	26E	9	NW¼ SW¼	Charles M. Layton
32.1	7S	26E	9	SW¼ SW¼	" " "
4.7	7S	26E	9	SW¼ SW¼	Mrs. Laura McCollom
17.4	7S	26E	9	SE¼ SW¼	Charles Gleis
14.4	7S	26E	9	SE¼ SW¼	Fred Waughtal
4.1	7S	26E	9	NW¼ SE¼	Charles M. Pursley & Robert L. Nash
22.8	7S	26E	9	SW¼ SE¼	
1.0	7S	26E	9	SE¼ SE¼	
11.2	7S	26E	16	NW¼ NW¼	
27.2	7S	26E	16	SW¼ NW¼	
24.	7S	26E	16	SE¼ NW¼	
17.6	7S	26E	16	NE¼ NW¼	
7.6	7S	26E	16	NW¼ NW¼	
4.4	7S	26E	16	NW¼ NW¼	J. T. Owens, Jr.
4.8	7S	26E	16	SW¼ NW¼	" " "
27.4	7S	26E	16	SW¼ NW¼	Charles M. Pursley & Robert L. Nash
31.6	7S	26E	16	SE¼ NW¼	" " "
2.2	7S	26E	16	NE¼ SW¼	
28.9	7S	26E	16	NE¼ SE¼	

Table No. 4 (Continued)
Union Canal—Lands and parties affected by priorities antedating 1903

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein
14.9	7S	20E	16	NW¼ SE¼	Charles M. Purdey & Robert L. Nash
38.8	7S	20E	16	NE¼ NE¼	J. T. Owens, Jr.
14.7	7S	20E	16	NE¼ NE¼	E. M. Morris
38.0	7S	20E	16	NW¼ NE¼	Jesse B. Quinn
4.0	7S	20E	16	NW¼ NE¼	John W. Morris
14.9	7S	20E	16	SW¼ NE¼	" " "
3.7	7S	20E	16	SW¼ NE¼	E. M. Morris
11.6	7S	20E	16	SW¼ NE¼	E. Gallego
23.8	7S	20E	16	SE¼ NE¼	J. T. Owens, Jr.
20.6	7S	20E	16	NE¼ NE¼	O. E. Owens
13.2	7S	20E	16	NE¼ NW¼	Austin Evans
22.1	7S	20E	16	NW¼ NW¼	R. A. Walker
4.0	7S	20E	16	SE¼ NW¼	J. M. Domingos
2.1	7S	20E	16	SE¼ NW¼	N. Ortiz
33.4	7S	20E	17	NE¼ NE¼	Austin Evans
30.0	7S	20E	17	NW¼ NE¼	Robert Morris
7.0	7S	20E	17	NW¼ NE¼	Town of Buford
3.6	7S	20E	17	SE¼ NE¼	Austin Evans
14.0	7S	20E	17	NE¼ NW¼	Town of Buford
8.0	7S	20E	17	NW¼ NW¼	" " "
3.0	7S	20E	18	NW¼ NE¼	Arizona Eastern Railroad Company
7.8	7S	20E	18	NW¼ NE¼	F. J. Jacobsen
7.8	7S	20E	18	NE¼ NW¼	Mary Lorraine Birdno
7.0	7S	20E	18	NE¼ NW¼	Mildred B. Larsen
8.0	7S	20E	18	NW¼ NW¼	C. G. Larsen
3.2	7S	20E	18	NW¼ NW¼	Mrs. W. A. Lewis

Table No. 5
Sunflower Canal—Lands and parties affected by priorities antedating 1903

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein
L.7	7S	26E	6	SE¼ SE¼	R. G. Layton, Jr.
6.0	7S	26E	6	SE¼ SE¼	E. N. Holmes
C.1	7S	26E	6	SW¼ SE¼	" " "
20.8	7S	26E	7	NE¼ NE¼	R. G. Layton, Jr.
20.0	7S	26E	7	NW¼ NE¼	R. A. Smith, Sr.
18.0	7S	26E	7	NW¼ NE¼	F. J. Jacobsen
20.0	7S	26E	7	SW¼ NE¼	" " " "
18.0	7S	26E	7	SW¼ NE¼	R. G. Layton, Jr.
20.0	7S	26E	7	SE¼ NE¼	" " " "
S.0	7S	26E	8	SW¼ NE¼	Charles M. Layton
22.0	7S	26E	8	SW¼ NE¼	Z. B. Decker
22.0	7S	26E	8	SE¼ NE¼	Charles M. Layton
23.0	7S	26E	8	NE¼ NW¼	Mrs. Mattie Price
20.0	7S	26E	8	NW¼ NW¼	" " "
32.7	7S	26E	8	SW¼ NW¼	" " "
28.1	7S	26E	8	SE¼ NW¼	" " "
14.2	7S	26E	8	NE¼ SW¼	" " "
10.1	7S	26E	8	NE¼ SE¼	Charles M. Layton
8.0	7S	26E	8	NW¼ SE¼	" " "
8.2	7S	26E	8	NW¼ SE¼	Z. B. Decker

Table No. 6
Graham Canal—Lands and parties affected by priorities antedating 1903

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein
4.4	8S	24E	27	NE¼ SE¼	E. E. Hammack
8.2	8S	24E	35	NE¼ NW¼	" " "
14.1	8S	24E	35	SE¼ NW¼	" " "
10.0	8S	24E	1	NW¼ NW¼	James A. McBride
12.3	8S	24E	1	SW¼ NW¼	John L. Heaps
23.0	8S	24E	1	NE¼ SW¼	Heber B. Bryce
20.0	8S	24E	1	NW¼ SW¼	John L. Heaps
16.0	8S	24E	1	SW¼ SW¼	Heber B. Bryce
12.0	8S	24E	1	SE¼ SW¼	" " "
12.0	8S	24E	1	SE¼ SW¼	John L. Heaps
24.4	8S	24E	1	NE¼ SE¼	Bell Kempton, Administratrix of the Estate of A. N. Bryce, deceased.
32.1	8S	24E	1	NW¼ SE¼	Heber B. Bryce
20.7	8S	24E	1	SW¼ SE¼	John L. Heaps
10.0	8S	24E	1	SE¼ SE¼	" " "
8.4	8S	24E	2	SE¼ NE¼	Martha A. Merrill
14.1	8S	24E	2	NW¼ SW¼	Miss Messinger
28.8	8S	24E	2	NE¼ SE¼	E. E. Hammack
23.7	8S	24E	11	NE¼ NE¼	Lewis W. Layton & Zab Isom
10.2	8S	24E	11	NW¼ NE¼	" " " "
8.7	8S	24E	12	NE¼ NE¼	H. A. Bryce
2.8	8S	24E	12	NE¼ NE¼	Heber B. Bryce
18.2	8S	24E	12	NE¼ NE¼	" " "
0.8	8S	24E	12	NW¼ NE¼	John Shlimpsky
10.1	8S	24E	12	NW¼ NE¼	J. W. Bryce
16.8	8S	24E	12	NW¼ NE¼	" " "
4.0	8S	24E	12	SW¼ NE¼	H. R. Chlarson
23.8	8S	24E	12	SW¼ NE¼	" "
12.4	8S	24E	12	SE¼ NE¼	J. W. Bryce
4.0	8S	24E	12	SE¼ NE¼	" " "
17.8	8S	24E	12	SE¼ NE¼	R. D. Lamoreaux
1.6	8S	24E	12	SE¼ NE¼	Guy Dixon
22.0	8S	24E	12	NE¼ NW¼	D. E. Adams
18.2	8S	24E	12	NW¼ NW¼	Lewis W. Layton & Zab Isom
2.8	8S	24E	12	SE¼ NW¼	J. W. Bryce
2.5	8S	24E	12	SW¼ NW¼	" " "
16.4	8S	24E	7	SW¼ NW¼	George O. Peak
16.6	8S	24E	7	SW¼ NW¼	R. D. Lamoreaux
15.0	8S	24E	7	SE¼ NW¼	William A. Peak
4.2	8S	24E	7	NE¼ SW¼	Bell Kempton, Administratrix of the Estate of A. N. Bryce, deceased.
14.0	8S	24E	7	NE¼ SW¼	O. A. Bryce
11.4	8S	24E	7	NE¼ SW¼	O. A. Bryce
14.8	8S	24E	7	NW¼ SW¼	Bell Kempton, Administratrix of the Estate of A. N. Bryce, deceased.
24.5	8S	24E	7	NE¼ SE¼	George O. Peak
22.6	8S	24E	7	NW¼ SE¼	" " "
7.0	8S	24E	7	NW¼ SE¼	O. A. Bryce
24.4	8S	24E	7	SW¼ SE¼	J. H. Neitzel
18.8	8S	24E	7	SE¼ SE¼	" " "
14.8	8S	24E	7	SE¼ SE¼	John W. Matthes
20.0	8S	24E	8	NE¼ SW¼	Susan Mathews

TABLE No. 6 (Continued)
Graham Canal—Lands and parties affected by priorities antedating 1905.

Number of acres	Lands: Described Referred to O. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
7.5	65	21E	8	NW¼ SW¼	John C. Cooper
10.0	65	21E	8	NW¼ SW¼	J. P. Walker
25.0	65	21E	8	SW¼ SW¼	" " "
10.8	65	21E	8	SE¼ SW¼	Simon Mathews
7.0	65	21E	8	SW¼ SE¼	" "
15.0	65	24E	8	SE¼ SE¼	William E. Bryn
14.0	65	21E	16	NW¼ NW¼	R. N. Norton
3.7	65	21E	16	SW¼ NW¼	J. E. Chesley
2.3	65	22E	16	SW¼ NW¼	Mrs. A. W. Chesley
20.0	65	23E	16	NW¼ SW¼	William Wemston
38.0	65	23E	16	SW¼ SW¼	G. A. Bryn
28.9	65	22E	16	SE¼ SW¼	A. O. Lamoreaux, Jr.
11.0	65	22E	16	SW¼ SE¼	Wilfred Peterson
21.0	65	23E	17	NE¼ NE¼	Mrs. A. W. Chesley
20.0	65	24E	17	NW¼ NE¼	" " "
18.1	65	24E	17	SW¼ NE¼	J. I. Palmer
17.0	65	23E	17	SE¼ NE¼	Mrs. A. W. Chesley
40.0	65	23E	17	NE¼ NW¼	R. E. Marshall
40.0	65	23E	17	NW¼ NW¼	" " "
30.8	65	23E	17	SW¼ NW¼	" " "
36.6	65	23E	17	SE¼ NW¼	" " "
20.6	65	23E	17	NE¼ SW¼	" " "
8.8	65	20E	17	NE¼ SW¼	Carlyle Reynolds
4.7	65	20E	17	NE¼ SW¼	Almeon Hubbard
2.1	65	23E	17	NE¼ SW¼	W. M. Blair
4.0	65	23E	17	NW¼ SW¼	R. E. Marshall
8.1	65	23E	17	NW¼ SW¼	Carlyle Reynolds
2.1	65	23E	17	NW¼ SW¼	W. M. Blair
0.6	65	23E	17	SW¼ SW¼	" " "
10.6	65	23E	17	SE¼ SW¼	Almeon Hubbard
2.6	65	23E	17	SE¼ SW¼	W. M. Blair
7.7	65	23E	17	NW¼ SE¼	J. L. Poots
29.7	65	23E	17	NW¼ SE¼	Almeon Hubbard
28.4	65	23E	17	SW¼ SE¼	Mrs. A. W. Chesley
36.6	65	23E	17	SE¼ SE¼	J. W. Fulshaw
12.8	65	25E	18	NE¼ NE¼	John W. Mastlin
16.4	65	25E	20	NE¼ NE¼	J. W. Fulshaw
0.7	65	26E	31	NE¼ NE¼	Pima Corporation of the Church of Jesus Christ of Latter Day Saints.
28.7	65	25E	31	NW¼ NE¼	A. T. West
19.8	65	25E	31	SW¼ NE¼	" " "
35.1	65	26E	31	SE¼ NE¼	Graham Stovall
10.9	65	26E	31	SE¼ NE¼	C. M. Mack
36.8	65	25E	31	NE¼ NW¼	A. T. West
38.2	65	25E	31	NW¼ NW¼	" " "
18.3	65	26E	32	NE¼ NW¼	W. F. Butler, Jr.
12.9	65	25E	32	NW¼ NW¼	" " "
11.3	65	25E	32	SW¼ NW¼	Mary Butler
16.0	65	25E	32	SE¼ NW¼	" "
23.0	65	25E	32	NE¼ SW¼	D. W. Sanders
17.1	65	24E	32	NW¼ SW¼	" " "
22.2	65	25E	32	NW¼ SE¼	Charles Watson
13.8	65	25E	32	SW¼ SE¼	" "
12.0	65	25E	32	SE¼ SE¼	" "
8.4	65	25E	32	SE¼ SE¼	R. D. Howard

TABLE No. 6 (Continued)
Graham Canal—Lands and parties affected by priorities antedating 1905.

Number of acres	Lands: Described Referred to O. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
13.8	65	25E	33	SW¼ SW¼	R. D. Howard
1.3	65	25E	33	SE¼ SW¼	J. M. Howard
12.6	65	25E	35	SW¼ SW¼	D. V. A. Talley
21.6	65	25E	35	SE¼ SW¼	" " " "
4.8	65	25E	35	SW¼ SE¼	" " " "
0.1	65	25E	36	NW¼ NE¼	Pratt Stewart
17.8	65	25E	36	NE¼ NW¼	J. M. Howard
14.9	65	24E	36	NE¼ NW¼	Pratt Stewart
24.9	65	25E	36	NW¼ NW¼	R. D. Howard
4.6	65	23E	36	SW¼ SW¼	Joseph Howard & J. M. Howard
2.7	65	24E	36	SE¼ NW¼	" " " "
15.0	65	24E	36	SE¼ NW¼	Pratt Stewart
2.0	65	23E	36	SW¼ NW¼	John Nutles
11.4	65	25E	36	NE¼ SW¼	"
4.0	65	24E	36	NE¼ SW¼	Joseph Howard & J. M. Howard
16.9	65	24E	36	NW¼ SE¼	Robert E. Reed
2.7	65	25E	36	NE¼ SE¼	D. V. B. Talley
18.8	65	25E	36	NW¼ SE¼	" " "
2.9	65	25E	36	SW¼ SE¼	" " " "
14.8	65	25E	36	SE¼ SE¼	" " " "
24.7	65	24E	36	SE¼ SE¼	Robert E. Reed
19.9	65	25E	37	NE¼ NE¼	R. D. Howard
4.7	65	25E	37	NE¼ NE¼	Charles Watson
17.8	65	24E	31	NE¼ NE¼	D. V. B. Talley
0.6	65	25E	35	NW¼ NE¼	" " "
0.8	65	24E	35	NE¼ NE¼	D. W. Sanders
0.4	65	25E	35	NE¼ NE¼	J. T. Talley
2.0	65	24E	35	NW¼ NE¼	School District #A County of Graham, State of Arizona.
21.8	65	24E	35	NW¼ NE¼	Jerome Walker
1.3	65	23E	35	NW¼ NE¼	J. T. Talley
20.9	65	24E	35	SW¼ NE¼	" " "
7.8	65	24E	35	SW¼ NE¼	Jerome Walker
2.0	65	24E	35	SE¼ NE¼	J. T. Talley "
14.8	65	24E	35	SE¼ NE¼	D. W. Sanders "
7.7	65	25E	35	SE¼ NE¼	Marcel Skinner "
6.3	65	25E	35	NE¼ NW¼	Jerome Walker
28.3	65	25E	35	NE¼ NW¼	Alma Peterson
14.9	65	25E	35	NE¼ NW¼	W. H. Spafford
34.0	65	25E	35	NW¼ NW¼	" " "
0.1	65	25E	35	NW¼ NW¼	Alma Peterson
4.0	65	24E	35	SE¼ NW¼	" "
0.9	65	24E	35	SE¼ NW¼	Jerome Walker
1.8	65	24E	35	NE¼ SW¼	" "
6.6	65	24E	35	NE¼ SW¼	J. T. Talley
30.0	65	24E	35	NE¼ SW¼	Marcel Skinner "
4.4	65	25E	35	NE¼ SE¼	D. W. Sanders "
1.6	65	25E	35	NE¼ SE¼	Francis M. Skinner
2.6	65	24E	35	NW¼ SE¼	D. W. Sanders
0.8	65	25E	35	NW¼ SE¼	Francis M. Skinner
2.0	65	24E	35	NW¼ SE¼	Marcel Skinner
21.7	65	24E	35	NW¼ SE¼	J. T. Talley
4.8	65	23E	35	SW¼ SE¼	" " "
4.2	65	23E	35	SW¼ SE¼	Marcel Skinner
6.7	65	24E	35	SW¼ SE¼	Francis M. Skinner

TABLE No. 6 (Continued)
Graham Canal—Lands and parties affected by priorities antedating 1905.

Number of acres	Lands: Described Referred to G. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
21.7	65	24E	35	SE¼ SE¼	Francis M. Skinner
4.0	65	24E	35	SE¼ SE¼	Marcel Skinner
18.1	65	26E	31	NW¼ SW¼	" "
4.4	65	26E	31	NW¼ SW¼	James M. Talley
31.4	65	26E	31	SW¼ SW¼	Francis M. Skinner
1.0	65	24E	31	SE¼ SW¼	" "
20.0	75	24E	1	NE¼ NE¼	James M. Talley
23.4	75	25E	5	SW¼ NW¼	William Wemston
17.2	75	25E	5	NW¼ SW¼	" "
4.7	75	25E	6	NE¼ NE¼	R. A. Smith, Sr.
2.0	75	25E	6	NW¼ NE¼	" "
22.1	75	25E	6	SW¼ NE¼	" "
2.7	75	25E	6	NW¼ NE¼	J. B. Golding
17.1	75	25E	6	SE¼ NE¼	" "
20.4	75	25E	5	SE¼ NE¼	R. A. Smith, Sr.
21.2	75	25E	6	NE¼ NW¼	F. O. Peterson
12.3	75	25E	6	NW¼ NW¼	" "
19.9	75	25E	6	NW¼ NW¼	James M. Talley
5.2	75	25E	6	SW¼ NW¼	F. O. Peterson
18.0	75	25E	6	SE¼ NW¼	" "
7.2	75	25E	6	SE¼ NW¼	" "
23.0	75	25E	6	NE¼ SE¼	J. B. Golding
10.9	75	25E	6	NW¼ SE¼	" "

192

Table No. 7

Fort Thomas Consolidated Canal—Lands and parties affected by priorities antedating 1908

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein
6.5	43	23E	17	SW¼ NW¼	J. E. Pulpher
6.0	43	23E	17	NW¼ SW¼	" "
5.1	43	23E	17	SW¼ SE¼	L. M. Taylor
6.4	43	23E	17	SE¼ SE¼	" "
16.0	43	23E	18	NW¼ NE¼	Mrs. Henry Diel
12.1	43	23E	18	SW¼ NE¼	" "
28.8	43	23E	18	SE¼ NE¼	J. E. Pulpher
2.1	43	23E	18	NE¼ SE¼	" "
24.5	43	23E	19	NE¼ NE¼	R. W. Black
13.2	43	23E	20	NE¼ NE¼	L. M. Taylor
1.0	43	23E	20	NW¼ NE¼	" "
1.2	43	23E	20	SW¼ NE¼	C. J. Grover
1.8	43	23E	20	SE¼ NE¼	L. M. Taylor
9.0	43	23E	20	NE¼ NW¼	C. N. Enos
14.8	43	23E	20	NW¼ NW¼	" "
4.0	43	23E	20	NW¼ NW¼	" "
16.6	43	23E	29	SW¼ NW¼	" "
28.8	43	23E	20	NE¼ SW¼	P. L. Moles & D. T. Moles
2.0	43	23E	20	NE¼ SW¼	C. J. Grover
28.7	43	23E	20	SW¼ SW¼	William H. Holcomb
22.1	43	23E	20	SE¼ SW¼	P. L. Moles & D. T. Moles
5.7	43	23E	20	SE¼ SW¼	Grady Coppedge
2.0	43	23E	20	SE¼ SW¼	C. J. Grover
18.2	43	23E	29	NW¼ SE¼	" "
4.8	43	23E	20	NW¼ SE¼	P. L. Moles & D. T. Moles
1.1	43	23E	20	NW¼ SE¼	C. J. Grover
2.1	43	23E	20	SW¼ SE¼	Grady Coppedge
18.3	43	23E	20	SW¼ SE¼	C. J. Grover
18.0	43	23E	29	SW¼ SE¼	James Peters
27.2	43	23E	21	SW¼ SW¼	Alonzo Wilmer
18.6	43	23E	21	SE¼ SW¼	" "
18.0	43	23E	28	NW¼ NW¼	Leslie Monteith & Wendell Monteith.
21.2	43	23E	28	NE¼ NW¼	" "
5.2	43	23E	28	NW¼ NW¼	Alonzo Wilmer (Leslie Monteith & (Wendell Monteith
36.5	43	23E	28	SE¼ NW¼	" "
2.6	43	23E	21	NE¼ SW¼	" "
23.1	43	23E	28	NW¼ NE¼	Mrs. S. J. Hunter
14.9	43	23E	28	SW¼ NE¼	" "
16.9	43	23E	28	SW¼ NE¼	Charles E. Dulle
29.1	43	23E	28	SE¼ NE¼	" "
16.6	43	23E	27	NE¼ NW¼	J. R. Elmer
4.1	43	23E	26	NE¼ NW¼	James E. Jones
13.6	43	23E	26	NW¼ NE¼	George P. Ballard
32.0	43	23E	26	SW¼ NE¼	George W. Healy
4.9	43	23E	26	NE¼ NW¼	George P. Ballard
8.1	43	23E	26	SW¼ NE¼	William G. Tyler
17.3	43	23E	26	SE¼ NW¼	Robert Farris
32.6	43	23E	26	SW¼ NW¼	T. J. Raz
7.6	43	23E	26	NW¼ SW¼	Charles S. Clark
7.2	43	23E	26	NW¼ SW¼	Jesse Garnis
17.2	43	23E	26	NE¼ SW¼	Robert Farris
34.3	43	23E	26	NW¼ SE¼	William G. Tyler
8.1	43	23E	1	NE¼ SW¼	W. G. Tuttle
31.1	43	23E	1	NW¼ SW¼	Claude M. Lee

14381—28—11

Table No. 7 (Continued)

Fort Thomas Consolidated Canal—Lands and parties affected by priorities antedating 1908

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein
4.3	43	23E	1	NW¼ SW¼	W. E. Platt
27.3	43	23E	1	SW¼ SW¼	" "
28.3	43	23E	1	SE¼ SW¼	W. O. Tuttle
24.3	43	23E	1	SW¼ SE¼	" "
2.7	43	23E	2	NE¼ NE¼	J. Y. Lee
11.7	43	23E	2	NW¼ NE¼	" "
28.8	43	23E	2	NW¼ NE¼	Omar Tyler
28.7	43	23E	2	SW¼ NE¼	J. Y. Lee
24.9	43	23E	2	SE¼ NE¼	" "
6.9	43	23E	2	NE¼ SE¼	George W. Healy
6.7	43	23E	2	NW¼ SE¼	" "
18.7	43	23E	2	SW¼ SE¼	" "
27.7	43	23E	2	SE¼ SE¼	" "
0.6	43	23E	11	NE¼ NE¼	P. M. Merrill
1.9	43	23E	11	NW¼ NE¼	" "
14.9	43	23E	11	NE¼ NE¼	F. A. Webster
36.8	43	23E	11	NW¼ NE¼	" "
6.4	43	23E	11	SW¼ NE¼	" "
32.6	43	23E	11	SE¼ NE¼	" "
6.6	43	23E	12	SW¼ NE¼	G. M. Leyton, Jr.
24.0	43	23E	12	SE¼ NE¼	F. A. Webster
36.8	43	23E	12	SE¼ NE¼	G. M. Leyton, Jr.
37.2	43	23E	12	NW¼ NW¼	P. M. Merrill
38.4	43	23E	12	SW¼ NW¼	W. O. Tuttle
38.8	43	23E	12	SE¼ NW¼	George A. Todd
6.4	43	23E	12	NE¼ SW¼	P. M. Merrill
6.2	43	23E	12	NW¼ SW¼	E. F. Bryan
32.0	43	23E	12	SW¼ SW¼	Emma E. Mellager
37.9	43	23E	12	SE¼ SW¼	W. H. Roach
40.0	43	23E	12	NE¼ SE¼	George A. Todd
40.0	43	23E	12	NW¼ SE¼	Eugene Curtis
40.0	43	23E	12	SW¼ SE¼	G. M. Leyton, Jr.
38.5	43	23E	12	SE¼ SE¼	" "
38.9	43	23E	12	SE¼ SE¼	Eugene Curtis
18.8	43	23E	13	NE¼ NE¼	(William Wamsley & Charles (Wamsley
36.8	43	23E	13	NW¼ NE¼	" "
16.0	43	23E	13	NW¼ NE¼	George A. Todd
36.3	43	23E	13	SW¼ NE¼	E. K. Parker
38.0	43	23E	13	NE¼ NW¼	W. C. Bryan
2.1	43	23E	13	NW¼ NW¼	" "
24.6	43	23E	13	NW¼ NW¼	David J. Bryan
34.4	43	23E	13	SW¼ NW¼	E. F. Bryan
31.0	43	23E	13	SE¼ NW¼	" "
38.0	43	23E	13	NE¼ SW¼	M. D. Maloy
4.4	43	23E	13	NW¼ SW¼	" "
16.6	43	23E	13	NE¼ SE¼	W. K. Summers
14.2	43	23E	13	NW¼ SE¼	A. E. Dewar
37.8	43	23E	13	SW¼ SE¼	Mrs. John J. Bledso
17.3	43	23E	13	SW¼ SE¼	George F. Richards
11.0	43	23E	13	SE¼ SE¼	" "
4.7	43	23E	14	NE¼ NE¼	David J. Bryan
18.3	43	24E	7	NW¼ SW¼	Eugene Curtis
16.8	43	24E	7	SW¼ SW¼	" "
0.1	43	24E	18	NW¼ NW¼	E. K. Parker
6.3	43	24E	18	SW¼ NW¼	" "
2.2	43	24E	19	NW¼ NE¼	Thomas H. Bell

Table No. 7 (Continued)

Fort Thomas Consolidated Canal—Lands and parties affected by priorities antedating 1908

Number of acres	Lands: Description: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein
30.6	43	24E	19	SW¼ NE¼	Thomas H. Bell
34.6	43	24E	19	NE¼ NW¼	" "
40.0	43	24E	19	SE¼ NW¼	" "
36.4	43	24E	19	NW¼ SE¼	R. H. Kempton
33.0	43	24E	19	SW¼ SE¼	" "
6.6	43	24E	19	SE¼ SE¼	" "
13.8	43	24E	30	NE¼ NE¼	Thomas H. Hundley
36.4	43	24E	30	SE¼ NE¼	" "
18.6	43	24E	30	NE¼ SE¼	" "

TABLE No. 8
Brown Canal—Lands and parties affected by priorities antedating 1904.

Number of acres	Lands: Description: Referred to G. & S. R. R. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
0.1	69	27E	34	SW¼ SE¼	Ezra Curtis
0.2	69	27E	34	SE¼ SE¼	L. R. Hood
7.8	69	27E	35	SW¼ NE¼	Manuel Sanchez
4.7	69	27E	35	SE¼ NE¼	" "
22.1	69	27E	35	NE¼ NE¼	Adiel Sanchez
3.7	69	27E	35	SW¼ NE¼	Expedion Sedillo
8.7	69	27E	35	NW¼ SW¼	Harry Van Order, Administrator of the Estate of Harry Van Order, deceased
10.7	69	27E	35	SW¼ SW¼	L. R. Hood
2.9	69	27E	35	SE¼ SW¼	Harry Van Order, Administrator of the Estate of Harry Van Order, deceased.
5.9	69	27E	36	NE¼ SE¼	Expedion Sedillo
14.7	69	27E	36	SE¼ SE¼	Adiel Sanchez
2.6	69	27E	36	NE¼ NE¼	Manuel Sanchez
3.9	69	27E	36	NE¼ SE¼	Amadeo Fajardo
7.2	69	27E	35	NW¼ SE¼	" "
7.9	69	27E	35	NW¼ SE¼	Manuel Sanchez
2.0	69	27E	35	NW¼ SE¼	Harry Van Order, Administrator of the Estate of Harry Van Order, deceased.
4.9	69	27E	36	SW¼ NW¼	Santos Baros
2.1	69	27E	36	SW¼ NW¼	John Sanchez
2.2	69	27E	36	SW¼ NW¼	Catalina Entenzinger
2.0	69	27E	36	SW¼ NW¼	Elisa Sanchez
2.1	69	27E	36	SW¼ NW¼	Expedion Sedillo
4.8	69	27E	36	SE¼ NW¼	Santos Baros
4.1	69	27E	36	SW¼ SW¼	Abel Sanchez
20.0	69	27E	36	NE¼ SW¼	Daniel Sanchez
4.8	69	27E	36	NE¼ SW¼	Abel Sanchez
1.4	69	27E	36	NW¼ SW¼	Santos Baros
1.0	69	27E	36	NW¼ SW¼	" "
7.9	69	27E	36	NW¼ SW¼	Abel Sanchez
4.1	69	27E	36	NW¼ SW¼	John Sanchez
2.7	69	27E	36	NW¼ SW¼	Catalina Entenzinger
2.8	69	27E	36	NW¼ SW¼	Elisa Sanchez
1.4	69	27E	36	NE¼ SE¼	Expedion Sedillo
					Juvenal Pereles, Administrator of the Estate of Ramon De Leon, deceased.
4.8	69	27E	36	NE¼ SE¼	John T. Traylor
2.3	69	27E	36	NW¼ SE¼	" "
20.7	69	27E	36	NW¼ SE¼	Daniel Sanchez
1.0	69	27E	36	SW¼ SE¼	" "
8.9	69	27E	36	SW¼ SE¼	John T. Traylor
2.7	69	27E	36	SE¼ SE¼	" "
7.8	69	27E	36	SE¼ SE¼	Juvenal Pereles, Administrator of the Estate of Ramon DeLeon, deceased.
7.4	69	28E	31	NE¼ SW¼	P. Johnson

TABLE No. 8 (Continued)
Brown Canal—Lands and parties affected by priorities antedating 1904.

Number of acres	Lands: Description: Referred to G. & S. R. R. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
13.1	69	28E	31	SW¼ SW¼	P. Johnson
13.4	69	28E	31	SE¼ SW¼	" "
13.9	69	28E	31	NE¼ SE¼	" "
21.6	69	28E	31	NW¼ SE¼	" "
16.0	69	28E	31	SW¼ SE¼	" "
0.8	69	28E	31	SE¼ SE¼	" "
5.4	70	27E	2	NW¼ NW¼	Edwin Viets
20.2	70	27E	2	NE¼ NE¼	Ezra Curtis
36.5	70	27E	3	NW¼ NE¼	" "
11.0	70	27E	3	SW¼ NE¼	L. R. Hood
31.9	70	27E	3	NE¼ NW¼	Clara Dominguez
2.9	70	27E	3	NW¼ NW¼	" "
24.3	70	27E	4	SW¼ NW¼	Edward Carpenter
36.9	70	27E	4	SE¼ NW¼	Edwin Moody
82.0	70	27E	4	NE¼ SW¼	" "
35.8	70	27E	4	NW¼ SW¼	Edward Carpenter
24.6	70	27E	3	SW¼ SW¼	" "
7.1	70	27E	4	SE¼ SW¼	Edwin Moody
12.9	70	27E	4	NE¼ SE¼	R. C. Usher
8.2	70	27E	4	SW¼ SE¼	W. R. Chambers
88.0	70	27E	4	SE¼ SE¼	" "
22.4	70	27E	9	NE¼ NE¼	" "
36.8	70	27E	9	NW¼ NE¼	" "
16.0	70	27E	9	SW¼ NE¼	Abran Madrid
19.5	70	27E	9	NE¼ NW¼	" "
2.4	70	27E	9	NE¼ NW¼	T. J. Steward
0.8	70	27E	9	NW¼ NW¼	" "
24.7	70	27E	9	SW¼ NW¼	" "
9.6	70	27E	9	SE¼ NW¼	" "
27.6	70	27E	9	SE¼ NW¼	Abran Madrid

TABLE No. 9
Dodge-Nevada Canal—Lands and parties affected by priorities antedating 1904.

Number of acres	Lands: Description: Referred to G. & S. R. R. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
2.6	65	24E	19	NW¼ SW¼	Gilbert Richardson
17.4	65	24E	19	SW¼ SW¼	" "
2.9	65	24E	20	NE¼ SW¼	C. J. Farrington
27.3	65	24E	20	NW¼ SE¼	" "
2.8	65	24E	20	SW¼ SE¼	" "
14.4	65	24E	20	SW¼ SE¼	Thomas H. Hemsley
0.8	65	24E	20	SE¼ SE¼	" "
2.3	65	24E	21	NE¼ NE¼	Art Lee
0.8	65	24E	21	NW¼ NE¼	" "
24.4	65	24E	21	NW¼ NE¼	" "
28.4	65	24E	21	SW¼ NE¼	" "
1.1	65	24E	21	SE¼ NE¼	" "
2.8	65	24E	21	SE¼ NE¼	William Boren
14.6	65	24E	21	SE¼ NW¼	Mrs. J. R. Cluff
24.4	65	24E	21	NE¼ SW¼	William Boren
2.0	65	24E	22	NW¼ SW¼	R. R. Shipp
0.8	65	24E	22	SW¼ SW¼	" "
11.4	65	24E	22	SE¼ SW¼	" "
0.6	65	24E	23	SW¼ SE¼	" "
2.1	66	24E	3	NE¼ SW¼	A. C. Hunt
0.6	66	24E	3	NW¼ SW¼	P. A. Farrell & A. T. West
1.0	66	24E	3	SW¼ SW¼	A. J. Curtis
2.1	66	24E	3	SW¼ SW¼	D. H. Matthews
38.0	66	24E	3	SW¼ SW¼	P. A. Farrell & A. T. West
19.6	66	24E	3	SE¼ SW¼	" " " " " "
18.9	66	24E	3	SE¼ SW¼	A. C. Hunt
1.4	66	24E	3	NW¼ SE¼	" " "
2.1	66	24E	3	SW¼ SE¼	" " "
38.4	66	24E	3	SW¼ SE¼	P. A. Farrell & A. T. West
10.0	66	24E	3	SE¼ SE¼	John Hicks
21.1	66	24E	4	NW¼ NW¼	A. O. Meek
38.6	66	24E	4	SW¼ NW¼	Joseph R. Pellett
1.4	66	24E	4	NE¼ NW¼	" " "
1.2	66	24E	4	NW¼ SW¼	" " "
18.9	66	24E	4	NW¼ SW¼	" " "
2.0	66	24E	4	SE¼ SW¼	P. Sanchez
20.8	66	24E	4	SW¼ SE¼	Benjamin Estels
2.4	66	24E	4	SE¼ SE¼	A. J. Curtis
2.2	66	24E	4	SE¼ SE¼	" "
28.7	66	24E	5	NE¼ NE¼	A. O. Meek
18.0	66	24E	5	SE¼ NE¼	Martha McElroy
2.0	66	24E	8	NE¼ NE¼	A. J. Curtis
28.6	66	24E	10	NE¼ NE¼	C. A. Matthews
2.0	66	24E	10	NW¼ NE¼	" "
18.4	66	24E	10	NW¼ NE¼	Elisa Matthews
20.2	66	24E	10	NW¼ NE¼	A. C. Hunt
18.6	66	24E	10	SW¼ NE¼	" "
1.1	66	24E	10	SW¼ NE¼	C. A. Matthews
18.9	66	24E	10	SW¼ NE¼	Elisa Matthews
22.2	66	24E	10	SE¼ NE¼	C. A. Matthews
38.9	66	24E	10	NE¼ NW¼	D. H. Matthews
6.2	66	24E	10	NE¼ NW¼	P. A. Farrell & A. T. West

TABLE No. 9 (Continued)
Dodge-Nevada Canal—Lands and parties affected by priorities antedating 1903.

Number of acres	Lands: Description: Referred to G. & S. R. R. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired hereto.
10.0	65	24E	10	NW¼ NW¼	F. A. Farrell & A. T. West
4.5	65	24E	10	NW¼ NW¼	A. J. Curtis
2.1	65	24E	10	NW¼ NW¼	D. H. Matthews
1.2	65	24E	10	SW¼ NW¼	F. A. Farrell & A. T. West
0.4	65	24E	10	SW¼ NW¼	" " "
4.6	65	24E	10	SW¼ NW¼	D. H. Matthews
1.6	65	24E	10	NW¼ SW¼	Lena Keiffer
4.0	65	24E	11	SW¼ NE¼	J. A. Mack
28.8	65	24E	11	SW¼ NW¼	Lehi Larsen, Sr.
8.1	65	24E	11	SW¼ NW¼	H. B. Elledge
11.6	65	24E	11	SE¼ NW¼	" " "
7.4	65	24E	11	NW¼ SW¼	Earl Larsen
1.7	65	24E	11	NW¼ SW¼	H. B. Elledge
10.9	65	24E	11	NE¼ SW¼	" " "
8.7	65	24E	11	SE¼ SW¼	P. A. Nyman
8.3	65	24E	11	NE¼ SE¼	Alef F. Carter
12.4	65	24E	11	NE¼ SE¼	Alef F. Carter, Administrator of the Estate of E. L. Carter, deceased.
24.7	65	24E	11	NW¼ SE¼	J. A. Mack
15.6	65	24E	11	NW¼ SE¼	P. A. Nyman
18.7	65	24E	11	SW¼ SE¼	" " "
8.0	65	24E	11	SW¼ SE¼	J. A. Mack
0.7	65	24E	11	SW¼ SE¼	Lehi Larsen, Sr.
9.7	65	24E	11	SW¼ SE¼	Mrs. Olivia Larsen
11.8	65	24E	11	SE¼ SE¼	Alef F. Carter
12.8	65	24E	11	SE¼ SE¼	Alef F. Carter, Administrator of the Estate of E. L. Carter, deceased.
8.0	65	24E	11	SE¼ SE¼	James M. Larsen
6.3	65	24E	12	SE¼ SE¼	W. A. Carter, Sr.
1.0	65	24E	13	NW¼ SW¼	Mrs. Sarah Harvey
28.2	65	24E	13	SW¼ SW¼	P. H. McBride
0.8	65	24E	13	SW¼ SW¼	John H. Foster
6.2	65	24E	13	SW¼ SW¼	I. A. Follett
6.3	65	24E	13	SE¼ SW¼	John H. Foster
1.3	65	24E	13	SE¼ SW¼	Ray Sabin
0.3	65	24E	13	SW¼ SE¼	J. E. Mack
3.4	65	24E	13	SW¼ SE¼	H. J. Anderson
16.2	65	24E	13	SE¼ SE¼	" " "
20.2	65	24E	13	NW¼ NE¼	" " "
2.0	65	24E	13	NW¼ NE¼	" " "
33.8	65	24E	13	NW¼ NE¼	J. E. Mack
7.0	65	24E	13	SW¼ NE¼	" "
14.2	65	24E	13	SE¼ NE¼	H. J. Anderson
13.3	65	24E	13	NE¼ NW¼	Ray Sabin
13.4	65	24E	13	NE¼ NW¼	John H. Foster
0.6	65	24E	13	NW¼ NW¼	" "
27.0	65	24E	13	NW¼ NW¼	P. H. McBride, Jr.
7.1	65	24E	14	NE¼ NE¼	W. A. Carter, Sr.
6.9	65	24E	14	NE¼ NE¼	James M. Larsen
1.8	65	24E	14	NE¼ NE¼	Mrs. Charlotte Wilkins

TABLE No. 9 (Continued)
Dodge-Nevada Canal—Lands and parties affected by priorities antedating 1903.

Number of acres	Lands: Description: Referred to G. & S. R. R. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired hereto.
7.0	65	24E	14	NE¼ NE¼	Alef F. Carter, Administrator of the estate of E. L. Carter, deceased.
4.9	65	24E	14	NW¼ NE¼	Mrs. Olivia Larsen
2.2	65	24E	14	NW¼ NE¼	Lehi Larsen, Sr.
2.7	65	24E	14	NW¼ NE¼	C. E. Bowen
2.4	65	24E	14	SE¼ NW¼	W. A. Linn
15.6	65	24E	14	SW¼ NW¼	H. J. Anderson
16.3	65	24E	14	NE¼ SW¼	W. A. Linn
1.9	65	24E	14	NW¼ SE¼	Lewis F. Mallon
12.6	65	24E	14	NW¼ SE¼	" "

TABLE No. 10
Smithville Canal—Lands and parties affected by priorities antedating 1903.

Number of acres	Lands: Description: Referred to G. & S. R. R. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired hereto.
10.7	65	24E	11	NE¼ SW¼	H. B. Elledge
4.1	65	24E	11	SE¼ SW¼	" "
28.7	65	24E	13	SW¼ NE¼	J. E. Mack
4.4	65	24E	13	SW¼ NE¼	J. A. Mack
28.9	65	24E	13	NW¼ SE¼	H. J. Anderson
28.9	65	24E	13	NW¼ SE¼	Earl Foster
11.1	65	24E	13	SW¼ SE¼	" "
6.6	65	24E	14	SE¼ NE¼	Rose J. Rasberry
18.9	65	24E	13	SE¼ NE¼	H. J. Anderson
4.3	65	24E	24	NE¼ NE¼	" " "
7.2	65	24E	17	SW¼ SW¼	John W. Mallon
1.7	65	24E	18	SW¼ NW¼	H. J. Anderson
10.3	65	24E	18	SW¼ SW¼	W. A. Linn
27.0	65	24E	18	SW¼ SW¼	" " "
23.9	65	24E	18	SW¼ SW¼	" " "
11.7	65	24E	18	SE¼ SW¼	" " "
4.8	65	24E	18	SE¼ SW¼	John W. Mallon
1.3	65	24E	18	NW¼ SE¼	Lewis F. Mallon
11.8	65	24E	18	SW¼ SE¼	W. E. McBride
13.7	65	24E	18	SW¼ SE¼	D. C. McBride
8.2	65	24E	18	SW¼ SE¼	William O. Taylor
4.9	65	24E	18	SW¼ SE¼	Thomas Dudley
28.1	65	24E	18	SE¼ SE¼	Jane L. Mallon
8.1	65	24E	18	SE¼ SE¼	John W. Mallon
27.4	65	24E	19	NE¼ NE¼	" " "
6.8	65	24E	19	NE¼ NE¼	W. W. Crockett
4.9	65	24E	19	NE¼ NE¼	E. W. Crockett
18.0	65	24E	19	NW¼ NE¼	" " "
12.1	65	24E	19	NE¼ NE¼	W. W. Crockett
6.0	65	24E	19	NE¼ NE¼	John W. Mallon
10.0	65	24E	19	SW¼ NE¼	E. W. Crockett
4.0	65	24E	19	SW¼ NE¼	E. E. Marshall
11.7	65	24E	19	SE¼ NE¼	W. W. Crockett
16.7	65	24E	19	SE¼ NE¼	E. W. Crockett
15.7	65	24E	19	SE¼ NE¼	E. E. Marshall
10.0	65	24E	19	NE¼ SE¼	Charles Rogers
4.9	65	24E	19	NE¼ SE¼	Mrs. John Hebdo
16.1	65	24E	19	NE¼ SE¼	Joseph H. Linn
8.2	65	24E	19	NE¼ NW¼	W. A. Linn
21.3	65	24E	19	NW¼ NW¼	" " "
130.00	65	24E	19	and 30	Town of Fleta
28.8	65	24E	29	NW¼ NW¼	John W. Mallon
8.8	65	24E	29	NW¼ NW¼	Henry Linn
18.4	65	24E	29	SW¼ NW¼	Al Linn
6.8	65	24E	29	SW¼ NW¼	W. E. McBride
7.9	65	24E	29	SW¼ NW¼	Charles Harby
2.8	65	24E	29	SW¼ NW¼	Al Linn
16.3	65	24E	30	NE¼ SW¼	R. O. Williams
5.4	65	24E	30	NE¼ SW¼	Mrs. Maude Alfred
7.0	65	24E	30	NE¼ SW¼	George Reynolds
10.9	65	24E	30	NE¼ SW¼	John B. Taylor
14.9	65	24E	30	NW¼ SW¼	W. A. Clark
25.4	65	24E	30	NW¼ SW¼	John Sabin
15.6	65	24E	30	SW¼ SW¼	" "
8.2	65	24E	30	SW¼ SW¼	R. O. Williams
3.1	65	24E	30	SW¼ SW¼	Lena M. Taylor
1.9	65	24E	30	SW¼ SW¼	W. L. Follett

TABLE No. 13 (Continued)
Smithville Canal—Lands and parties affected by priorities antedating 1906.

Number of acres	Lands: Described: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
13.9	6S	25E	29	SE¼ SW¼	Charles S. Lemon
23.8	6S	25E	29	SE¼ SW¼	Mrs. Maude Allred
14.2	6S	25E	29	NE¼ NE¼	W. L. Follett
14.8	6S	25E	29	NW¼ SE¼	S. G. Williams
13.6	6S	25E	30	SW¼ SE¼	Jos Lemon
17.7	6S	25E	30	SW¼ SE¼	Mrs. Nancy Reynolds
7.6	6S	25E	30	SW¼ SE¼	Beatrice Lemon
39.4	6S	25E	30	SE¼ SE¼	Charles S. Lemon
4.6	6S	25E	31	SW¼ SW¼	Jos Lemon
15.8	6S	25E	31	NE¼ NW¼	Charles S. Lemon
7.8	6S	25E	31	NE¼ NW¼	Gerald Morrill
6.2	6S	25E	31	NW¼ NW¼	W. R. Bingham
19.2	6S	25E	31	SW¼ NW¼	" " "
9.6	6S	25E	31	SW¼ NW¼	A. M. Farmer
9.2	6S	25E	31	SE¼ NW¼	Gerald Morrill
22.0	6S	25E	31	SE¼ NW¼	Wilford Moody
38.9	6S	25E	31	NE¼ SW¼	R. C. Phillips
1.2	6S	25E	31	NW¼ SW¼	W. R. Bingham
1.0	6S	25E	31	NW¼ SW¼	A. M. Farmer
24.1	6S	25E	31	NW¼ SW¼	Lamyan Walton
37.6	6S	25E	31	SW¼ SW¼	" " "
37.1	6S	25E	31	SE¼ SW¼	R. C. Phillips
38.3	6S	25E	31	SW¼ NE¼	J. E. Roberts
38.6	6S	25E	31	SE¼ NW¼	Clarence Martin
18.6	6S	25E	32	NW¼ NW¼	S. G. Williams
70.1	6S	25E	32	NW¼ NW¼	P. C. Morrill, Administrator of the Estate of Jos Pengyl, deceased.
18.6	6S	25E	33	SW¼ NW¼	J. E. Norton
18.7	6S	25E	33	SW¼ NW¼	J. D. Knudsen
18.1	6S	25E	33	SE¼ NW¼	J. E. Norton
14.4	6S	25E	33	SE¼ NW¼	W. L. Norton, Jr.
14.0	6S	25E	33	SE¼ NW¼	" " " Sr.
19.2	6S	25E	33	NE¼ SW¼	J. D. Knudsen
38.8	6S	25E	33	NW¼ SW¼	" " "
0.3	6S	25E	33	SE¼ SW¼	" " "
39.1	6S	25E	33	NE¼ SE¼	Tinner Christenson
17.6	6S	25E	33	NW¼ SE¼	E. M. Allred
21.9	6S	25E	33	NW¼ SE¼	J. N. Allred
14.2	6S	25E	33	SW¼ SE¼	D. T. Adams
24.1	6S	25E	33	SE¼ SE¼	" " "
38.8	6S	25E	29	NE¼ NE¼	P. C. Morrill, Administrator of the Estate of Jos Pengyl, deceased.
36.7	6S	25E	29	NW¼ NE¼	" " "
31.5	6S	25E	29	SE¼ NE¼	" " "
1.9	6S	25E	29	NE¼ NW¼	Joseph Alder
24.4	6S	25E	29	NE¼ NW¼	A. J. Moffet
17.8	6S	25E	29	NE¼ NW¼	J. W. Sewell
12.0	6S	25E	34	NE¼ NW¼	R. P. Cluff
17.4	6S	25E	34	NW¼ NW¼	" " "

TABLE No. 11 (Continued)
Curtis Canal—Lands and parties affected by priorities antedating 1906.

Number of acres	Lands: Described: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
1.4	5S	24E	7	NW¼ SE¼	E. W. McElwee
10.5	5S	24E	7	SW¼ SE¼	" " "
8.8	5S	24E	17	SW¼ NW¼	F. M. Farrell
14.7	5S	24E	17	SW¼ NW¼	" " "
15.8	5S	24E	17	SE¼ SW¼	" " "
2.4	5S	24E	17	NE¼ SW¼	" " "
32.0	5S	24E	17	NW¼ SW¼	" " "
18.7	5S	24E	17	SW¼ SW¼	" " "
37.9	5S	24E	18	NE¼ NE¼	A. F. McElwee
6.8	5S	24E	18	NW¼ NE¼	" " "
12.9	5S	24E	18	SW¼ NE¼	" " "
36.9	5S	24E	18	SE¼ NE¼	" " "
20.3	5S	24E	18	SE¼ SE¼	Virgil B. McElwee
13.3	5S	24E	20	NW¼ NW¼	Basil Holladay
28.3	5S	24E	20	SW¼ NW¼	E. G. Bullard
48.0	5S	24E	20	NE¼ SW¼	Jasrod T. Brown
32.0	5S	24E	20	NW¼ SW¼	" " "
13.4	5S	24E	29	SW¼ SW¼	Vyo D. Palmer
18.6	5S	24E	29	SE¼ SW¼	" " "
24.8	5S	24E	29	SE¼ SW¼	W. G. Marshall
24.8	5S	24E	30	NW¼ SE¼	Jasrod T. Brown
10.7	5S	24E	30	SW¼ SE¼	W. G. Marshall
30.1	5S	24E	30	SW¼ SE¼	L. M. Thatcher
11.9	5S	24E	30	SE¼ SE¼	" " "
8.2	5S	24E	30	SE¼ SE¼	W. G. Marshall
4.8	5S	24E	31	SW¼ SW¼	Heber C. Kimball
14.8	5S	24E	32	NW¼ NW¼	Adelaide M. Bryce
28.1	5S	24E	32	SW¼ NW¼	" " "
8.4	5S	24E	32	SW¼ NW¼	Asa B. Kempton
4.2	5S	24E	32	SW¼ NW¼	Calvin I. Kempton
8.7	5S	24E	32	SE¼ NW¼	B. G. Ragsy
1.9	5S	24E	32	SE¼ NW¼	Calvin I. Kempton
8.7	5S	24E	32	NE¼ SW¼	" " "
8.7	5S	24E	32	NW¼ SW¼	B. G. Ragsy
8.8	5S	24E	32	NW¼ SW¼	Henry A. Waters
20.9	5S	24E	32	SW¼ SW¼	Antone Christenson
2.9	5S	24E	32	SW¼ SW¼	Heber Kempton
1.8	5S	24E	33	SW¼ SW¼	Thomas F. Fuller
1.1	5S	24E	33	SW¼ SW¼	Henry E. Plumb
1.0	5S	24E	33	SW¼ SW¼	L. Palmer
0.1	5S	24E	33	SW¼ SW¼	Calvin I. Kempton
2.1	5S	24E	33	SE¼ SW¼	Adelaide M. Bryce
10.0	5S	24E	33	SE¼ SW¼	Lee L. Palmer
4.7	5S	24E	33	SE¼ SW¼	L. Palmer
4.0	5S	24E	33	SE¼ SW¼	Mrs. Elizabeth Curtis
1.7	5S	24E	33	SE¼ SW¼	Ezy Palmer
18.2	5S	24E	33	NW¼ NE¼	W. G. Marshall
18.2	5S	24E	33	NW¼ NE¼	John Bolton
24.1	5S	24E	33	NW¼ NE¼	W. G. Marshall
32.0	5S	24E	33	NW¼ NE¼	John Bolton
32.0	5S	24E	33	SW¼ NE¼	Asa B. Kempton

TABLE No. 11 (Continued)
Curtis Canal—Lands and parties affected by priorities antedating 1906.

Number of acres	Lands: Described: Referred to G. & S. R. B. & M.: Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding columns when jurisdiction acquired herein.
38.7	4S	24E	29	SE¼ NE¼	John D. Calvin
32.0	4S	24E	29	NE¼ NW¼	John Bolton
0.4	4S	24E	29	" " "	" " "
22.0	4S	24E	29	SE¼ NW¼	Asa B. Kempton
15.0	4S	24E	29	NE¼ SW¼	" " "
32.4	4S	24E	29	SE¼ SW¼	A. J. Kempton
					Calvin I. Kempton and
					Heber Kempton
					John Bolton
38.4	4S	24E	29	NE¼ SE¼	" " "
40.0	4S	24E	29	SW¼ SE¼	A. J. Kempton
0.8	4S	24E	29	SW¼ SE¼	Asa B. Kempton
38.7	4S	24E	29	SW¼ SE¼	A. J. Kempton
0.0	4S	24E	29	SE¼ SE¼	" " "
4.7	4S	24E	29	SE¼ SE¼	Asa B. Kempton
22.3	4S	24E	29	SE¼ SE¼	" " "
18.7	4S	24E	32	NE¼ NE¼	John D. Calvin
18.0	4S	24E	32	NE¼ NE¼	Calvin I. Kempton and
					Heber Kempton
38.2	4S	24E	33	NW¼ NE¼	Claude M. Lee
8.0	4S	24E	33	NW¼ NE¼	A. J. Kempton
8.8	4S	24E	33	SW¼ NE¼	" " "
17.6	4S	24E	33	SW¼ NE¼	Antone Christenson
7.8	4S	24E	33	SW¼ NE¼	A. A. Wilkins
10.2	4S	24E	33	SE¼ NE¼	Calvin I. Kempton and
					Heber Kempton
19.3	4S	24E	33	SE¼ NE¼	John D. Calvin
32.2	4S	24E	33	NE¼ NW¼	Henry E. Plumb
9.1	4S	24E	33	NE¼ NW¼	J. M. Plumb
28.0	4S	24E	33	NW¼ NW¼	Perry Tryon
8.8	4S	24E	33	SW¼ NW¼	" " "
30.0	4S	24E	33	SW¼ NW¼	J. M. Plumb
9.7	4S	24E	33	NE¼ SW¼	Ira Hancock
8.6	4S	24E	33	NE¼ SW¼	A. A. Wilkins
7.0	4S	24E	33	NW¼ SW¼	" " "
8.8	4S	24E	33	NW¼ SW¼	Calvin I. Kempton and
					Heber Kempton
4.7	4S	24E	33	NE¼ NW¼	John D. Calvin
0.4	4S	24E	33	NE¼ NW¼	Claude M. Lee
1.0	4S	24E	33	NE¼ NW¼	Anna M. Moyes
0.1	4S	24E	33	NE¼ NW¼	Elijah Hamblin
0.1	4S	24E	33	NE¼ NW¼	J. N. Hawkins
0.3	4S	24E	33	NE¼ NW¼	A. A. Wilkins
3.2	4S	24E	33	NE¼ NW¼	School District No. 11, County of Graham, State of Arizona.
2.1	4S	24E	33	NE¼ NW¼	Annie B. Hancock
0.9	4S	24E	33	NW¼ NW¼	Claude M. Lee
0.4	4S	24E	33	NW¼ NW¼	Heber Kempton
0.4	4S	24E	33	NW¼ NW¼	Thomas F. Fuller
0.4	4S	24E	33	NW¼ NW¼	Perry Tryon
1.2	4S	24E	33	NW¼ NW¼	Fred Kempton
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

196

TABLE No. 11 (Continued)
Curtis Canal—Lands and parties affected by priorities antedating 1908.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
2.7	52	24E	32	NW¼ NW¼	Isaac G. Palmer
2.6	52	24E	31	NW¼ NW¼	W. E. Platt
11.3	52	24E	31	NW¼ NW¼	Aron T. Nelson
3.2	52	24E	31	NW¼ NW¼	William Fuller
1.0	52	24E	31	NW¼ NW¼	Van D. Palmer
6.7	52	24E	31	NW¼ NW¼	A. A. Wilkins
1.4	52	24E	31	NW¼ NW¼	Alva Thatcher
2.8	52	24E	31	NW¼ NW¼	Thomas F. Fuller
1.8	52	24E	31	NW¼ NW¼	Alva Thatcher
0.8	52	24E	31	NW¼ NW¼	Elijah Hawkins
1.0	52	24E	31	NW¼ NW¼	J. N. Hawkins
0.2	52	24E	31	SW¼ NW¼	William Fuller
12.8	52	24E	31	SW¼ NW¼	Thomas F. Fuller
0.7	52	24E	31	SW¼ NW¼	Van D. Palmer
15.9	52	24E	31	SW¼ NW¼	A. A. Wilkins
1.9	52	24E	31	SE¼ NW¼	" " "
15.0	52	24E	31	SE¼ NW¼	" " "
13.3	52	24E	31	NE¼ SW¼	" " "
14.8	52	24E	31	NE¼ SW¼	Ira Hancock
6.7	52	24E	31	NW¼ SW¼	Thomas F. Fuller
12.3	52	24E	31	NW¼ SW¼	A. A. Wilkins
18.7	52	24E	31	NW¼ SW¼	Ira Hancock
30.4	52	24E	31	SW¼ SW¼	Lester Carpenter & Frank Carpenter
31.1	52	24E	31	SW¼ SW¼	
23.1	52	24E	2	NW¼ SW¼	Miles Mandegar
1.1	52	24E	2	SW¼ SW¼	" "
14.0	52	24E	2	SE¼ SW¼	Joseph Mayes
0.9	52	24E	2	NW¼ NE¼	Isaac A. Hancock
17.9	52	24E	2	SW¼ NE¼	" " "
10.8	52	24E	2	SE¼ NE¼	" " "
17.9	52	24E	2	NE¼ SE¼	Miles Mandegar
0.1	52	24E	4	NE¼ NE¼	Thomas F. Fuller
2.2	52	24E	4	NE¼ NE¼	William Carpenter
17.4	52	24E	4	NW¼ NE¼	Thomas F. Fuller
23.1	52	24E	4	NW¼ NE¼	William Carpenter
17.3	52	24E	4	SW¼ NE¼	" "
2.2	52	24E	4	SW¼ NE¼	Amy T. Leavitt
11.8	52	24E	4	SE¼ NE¼	William Carpenter
11.1	52	24E	4	SE¼ NE¼	Isaac A. Hancock
2.3	52	24E	4	NE¼ NW¼	Thomas F. Fuller
0.1	52	24E	4	SE¼ NE¼	Isaac A. Hancock

TABLE No. 12
Fournes Canal—Lands and parties affected by priorities antedating 1908.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
5.9	69	27E	35	NE¼ SE¼	David Jurado
2.1	70	27E	2	NE¼ NE¼	" "
1.8	70	27E	2	NE¼ NE¼	Jose Samora
6.1	70	27E	2	NW¼ NE¼	David Jurado
3.4	70	27E	2	NW¼ NE¼	Jose Samora
14.3	70	27E	2	NW¼ NE¼	Francisco Montes
25.8	70	27E	2	SW¼ NE¼	" "
11.8	70	27E	2	SW¼ NW¼	Emula Viain
0.8	70	27E	2	SE¼ NW¼	" "
17.4	70	27E	2	SE¼ NW¼	Mrs. Clara Fournes
85.4	70	27E	2	NW¼ SW¼	Jose Morales
5.0	70	27E	2	NE¼ SW¼	J. M. Grijalva
2.0	70	27E	2	NE¼ SW¼	" "
12.1	70	27E	2	NW¼ SW¼	Jose B. Garcia
4.0	70	27E	2	NW¼ SW¼	Jose Varsio
14.1	70	27E	2	NW¼ SW¼	Siria Medina
12.1	70	27E	2	SW¼ SW¼	" "
2.0	70	27E	2	SW¼ SW¼	Jose Varsio
7.7	70	27E	2	SW¼ SW¼	Jose B. Garcia
3.0	70	27E	2	SW¼ SW¼	J. M. Grijalva
7.1	70	27E	2	SW¼ SW¼	" "
8.1	70	27E	2	SE¼ SW¼	Jose Morales
7.2	70	27E	2	NW¼ SE¼	" "
8.8	70	27E	2	SE¼ NE¼	Adriana Serna
1.1	70	27E	2	SE¼ NE¼	V. Carpoco
31.7	70	27E	2	NE¼ SE¼	Clovt. Curtis & Ben Curtis
17.1	70	27E	30	SW¼ NW¼	C. V. Mosley
11.3	70	27E	30	NW¼ SW¼	" "

TABLE No. 13
Colvin-Jones Canal—Lands and parties affected by priorities antedating 1908.

Number of acres	Lands: Description: Referred to G. & S. R. B. & M. Twp.	Rge.	Sec.	Subdivision	Ownership: Parties owning lands described in the preceding column when jurisdiction acquired herein.
16.0	48	22E	32	NW¼ NE¼	W. P. Ballinger
16.1	48	23E	27	SW¼ NE¼	Mrs. W. E. Irwin
4.0	48	23E	27	SE¼ NE¼	" " "

197

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VI

That plaintiff has and owns rights in the waters of the Gila River, and in and to the use of said waters, as follows:

(1) The right on behalf of the Pima and other Indians of the Gila River Indian Reservation, their descendants, successors and assigns, to divert 210,000 acre feet of the waters of the Gila River during each irrigation season, from the natural flow in said river at the Ashurst-Hayden and Sacaton diversion dams—as of an immemorial date of priority and to the extent that such waters are available under said priority—at a rate of diversion not exceeding 437.5 cubic feet per second at any time during such season for the reclamation and irrigation of the irrigable Indian allotments on said reservation, which amount to 49,896 acres, as they now are or hereafter may be made, and of the administrative area on said Reservation which accounts to 650 acres, to the extent that the herein described water right, which is sufficient for and limited to the needs of 35,000 acres, will reclaim and irrigate the same. The waters available under this right and priority shall be divided and distributed to the lands of the Florence-Casa Grande Project as decreed and provided in subdivision (3) of this Article.

(2) The right, on behalf of the Apache and other Indians of the San Carlos Indian Reservation, their descendants, successors and assigns, to divert 6,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said river at diversion points on said river within said reservation—or above the eastern boundary thereof under such rights of way as may now exist or be acquired therefor; due measures being taken to avoid injuries to other water users by said last mentioned diversions,—as of a date of priority of the year 1846 and to the extent that such waters are available under said priority—at a rate of diversion not exceeding 12.5 cubic feet per second at any time during such season, for the reclamation and irrigation of 1000 acres of the irrigable lands within the said reservation (or in part or wholly within the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose), situated in the County of Graham, State of Arizona, and more particularly described as within said reservation and that portion of the valley of the Gila River above the San Carlos Reservoir and flow line thereof: that said water right, however, if or when sanctioned by law, at the discretion of the Secretary of the Interior and with the consent of the San Carlos Irrigation and Drainage District expressed by its board of directors, may be purchased by or for the benefit of the San Carlos Project and used for said project as other of that project's stream flow right below the San Carlos Reservoir are or may be used under this decree, provided, however, that such right is and shall be treated as a project right to which no individual or individual lands shall have or assert an interest or priority as against any lands given rights in the Priority Schedule; and defendants, Gila Valley Irrigation District, Virden Irrigation District and Franklin Irrigation District through their boards of directors, having offered and agreed to facilitate the aforesaid purchase of said water right so that it may be transferred and used as aforesaid for the benefit of the San Carlos Project as other of that Project's stream flow rights are or may be used below said reservoir under this decree and to pay the United States therefor the sum of Sixty-Two Thousand Five Hundred ($62,500.00) Dollars, said payments to be made by each of said Districts, in the proportion that the number of acres of land in said district decreed water rights herein bears to the whole number of acres of land in said three districts' so decreed water rights, and to pay said sum within two years from the acceptance of said offer, if said offer shall be accepted within five years from the date of this decree. Said offer, however, to be considered as made by said districts only when all requirements of Arizona law with regard to making binding offers of such a character shall have been complied with, it is hereby decreed that if said offer is made and accepted at said purchase price sum or at any other sum agreed upon by the said three districts and the United States, the said water right shall be transferred as aforesaid for the benefit of the San Carlos Project, but, in no event shall be used or useable or be asserted as against the lands given rights in the Priority Schedule above the San Carlos reservoir on account of which have been paid the full proportionate per acre share of the cost of said purchase.

(3) The right to divert 372,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said stream at the Ashurst-Hayden and Sacaton diversion dams, as of the date of priority of 1918, and to the extent that such waters are available under said priority—at a total rate of diversion not exceeding 775 cubic feet per second at any time during such season, for the reclamation and irrigation of the 92,000 acres of the irrigable lands of the so-called Florence-Casa Grande Project, or its equivalent, more particularly described as follows:

(a) The aforesaid Indian allotments now or hereafter made on the said Indian Reservation, and the said administrative area, amounting in the aggregate to 50,546 acres to the extent that thirty-five sixty-seconds of the herein described water right, which is sufficient for and limited by the needs of 35,000 acres, will reclaim and irrigate the same.

198

(b) 27,000 acres of land in the private ownership of White persons (also referred to herein as "White lands") described as follows:

Twp. 4 S., R. 8 E.:

Section 16:

SE¼ less 3 acres in Northwest Corner;

S½ SW¼;

Twp. 4 S., R. 9 E.:

Section 29:

10 acres in NE¼ NE¼, between North Side Canal and Gila River;

South 24 acres of NE¼;

South 17 acres of SE¼ SW¼;

S½ S½ SW¼ SW¼;

Section 26:

30 acres in N½ SE¼ between North Side Canal and Gila River;

60 acres in SW¼ between North Side Canal and Gila River;

Section 27:

S½ SW¼;

North 38 acres of S½ SE¼;

South 25 acres of S½ SE¼;

Section 28:

S½ S½;

Section 29:

S½ SW¼;

SE¼ SE¼;

S½ SW¼ SE¼;

Section 31:

E½ NW¼;

S½ NE¼;

Section 32:

N½ N½ N½ N½ NW¼;

NW¼ NE¼;

Section 33:

N½ N½;

55 acres in S½ NE¼, North of Gila River;

Section 34:

100 acres in NW¼;

60 acres in N½ NE¼;

S½ SE¼;

SW¼ SE¼;

Section 35:

147.80 acres in SW¼;

195.68 acres in E½;

Section 36:

W½ NW¼;

71.73 acres in E½ NW¼;

78.00 acres in W½ NE¼;

E½ NE¼;

137.88 acres in SE¼;

Twp. 4 S., R. 10 E.:

Section 10:

80 acres between North Side Canal and Gila River in SE¼;

Section 11:

S½ SW¼ SW¼ SW¼;

Section 14:

N½ NW¼ NW¼ NW¼;

Section 15:

80 acres between Florence Canal and Gila River, in NE¼;

Section 16:

148.60 acres in South part of Section between North Side Canal and Arizona Eastern Railroad and between Arizona Eastern Railroad and Gila River;

Section 17:

160.00 acres in that part lying between North Side Canal and Gila River and East of East line of W½ SW¼;

Section 20:

S½ NE¼;

SE¼;

30 acres in SE¼ SW¼;

Section 21:

119.00 acres in W½ W½;

80 acres in N½ South of Gila River;

Section 28:

W½ NE¼;

12 acres in NE¼ NW¼;

13 acres in NW¼ SW¼;

Section 29:

W½;

202.80 acres in E½;

Section 30:

NE¼ NW¼;

S½ NE¼;

SE¼;

N½ NW¼;

S½ NW¼ NW¼;

S½ N½ SW¼ SW¼;

S½ N½ W½ NW¼ SW¼;

Section 31:

NW¼, less 4 acres of deeded highway;

SE¼ NE¼;

NW¼ SW¼;

NW¼ SW¼ SW¼;

(continued)

199

(continuation of Section 31:)

3 acres in Northwest Corner of SW¼ SW¼ SW¼;

N½ SE¼;

Section 32:

70 acres in N½ NW¼;

Twp. 6 S., R. 7 E.:

Section 1:

8 acres in the Southeast corner of NW¼;

Twp. 6 S., R. 8 E.:

Section 6:

S½ NW¼;

Section 7:

SE¼ NE¼;

NE¼ SE¼;

Section 8:

South 86.00 acres of S½ NE¼;

SW¼;

Section 9:

South 120 acres of NE¼;

South 25 acres of W½ NW¼;

SW¼ NW¼;

N½ NW¼ SW¼;

W½ NW¼ NW¼ SE¼;

Section 10:

S½ SW¼ NE¼;

S½ S½ SE¼ NE¼;

S½ S½ NW¼;

N½ SW¼;

N½ NW¼ SE¼;

North 30 acres of NE¼ SE¼;

Section 14:

NE¼;

SW¼ SW¼;

Section 17:

E½;

NW¼;

Section 18:

SE¼;

S½ NW¼;

S½ SW¼;

Section 21:

SE¼ NW¼;

E½ SE¼;

Section 22:

S½;

Section 23:

E½;

SE¼ SW¼;

Section 24:

SW¼;

S½ except SE¼ SE¼ NE¼;

Section 25:

All of Section 25;

Section 26:

W½ N½ NW¼ NW¼;

Section 27:

SW¼;

South 38.00 acres in SE¼ NW¼;

E½ SE¼;

Section 34:

NE¼;

Section 35:

NW¼;

8.88 acres in Northeast Corner of NE¼;

Twp. 6 S., R. 9 E.:

Section 1:

10 acres in N½ NW¼ SE¼, North of Florence;

N½ NE¼;

(continued)

North 17 acres of NE¼ NE¼;

8.22 acres in Northeast corner of NW¼;

S½ SW¼ SW¼ NW¼;

N½ NE¼ SE¼;

60 acres in SW¼ North of Florence Canal;

.07 acres in Lot 6, 7 and 8, Block 6, Turner's Addition;

19. acres in Blocks 48, 49, 52 and 53, Douglas Addition;

Section 2:

North 88.32 acres in NE¼ West of Florence Townsite;

NW¼;

4.38 acres in Northeast Corner of NW¼ SW¼;

Section 3:

N½ NW¼ NE¼;

N½ NE¼ NW¼;

S½ N½ N½;

S½ N½;

North 36.01 acres of the W½ SW¼;

North 33.48 acres of the E½ SW¼;

North 18.02 acres of the NW¼ SE¼;

Section 4:

278.31 acres in S½, South of Gila River;

Section 8:

33 acres in W½ E½, South of Gila River;

20 acres in SW¼, South of Gila River;

Section 6:

W½ W½ NW¼;

W½ E½ SW¼ NW¼;

NW¼ SW¼;

Section 7:

123.69 acres in N½, South of Gila River;

Section 8:

280.00 acres in N½;

200

Twp. 6 S., R. 9 E.: (continued)

Section 9:
10 acres in NE¼ NE¼;
S½ S½;

Section 10:
SW¼ NW¼;
NE¼ SW¼;
SE¼ SW¼ NW¼;
NE¼ NW¼ SW¼;

Section 11:
127 acres in W½ North and West of Florence Canal;
North 110 acres of NW¼;

Section 15:
W½ W½ except NW¼ NW¼ NW¼;
E½ NE¼;
SW¼ NE¼;
W½ SW¼;
60 acres in W½ S½ North of Florence Canal;

Section 16:
N½;
SE¼;
N½ SW¼;

Section 17:
S½;
NE¼;

Section 18:
SW¼;
W½ SE¼;
SE¼ SE¼;
NW¼ NW¼;

Section 19:
All of Section 19;

Section 21:
NW¼;
SW¼ except 15 acres in Southeast Corner;
N½ NW¼ SE¼;
North 15 acres in N½ NE¼ SE¼;

Section 22:
W½ W½ NW¼;

Section 28:
40 acres in N½ NW¼, West of Florence Canal;

Section 29:
West 60 acres in S½ NE¼;
75.20 acres in SE¼, West of Florence Canal;
W½;

Section 30:
E½;
NE¼ NW¼;

Section 31:
All of Section 31;

Section 32:
310 acres in [illegible] West of Florence Canal;

Twp. 6 S., R. 10 E.:

Section 8:
30 acres in Northeast part of NW¼;

Twp. 6 S., R. 6 E.:

Section 13:
North 38.11 acres of E½ NE¼;
SE¼;
SE¼ NW¼;

Section 14:
NE¼;
E½ SW¼;

Section 15:
S½ NE¼;
East 15 acres of SE¼ NW¼;
(continued)

S½ S½ W½ NE¼;
South 25 acres of S½ SE¼;

Section 22:
E½ SE¼ SE¼;

Section 23:
East 55 acres of W½ NW¼;
East 15 acres of W½ SE¼ NW¼;
North 30 acres of NE¼ SW¼;
S½ SW¼ SW¼;
SE¼;
North 30 acres of NW¼ NE¼;
East 30 acres of S½ NE¼;

Section 24:
South 14 acres of W½ W½;
S½ SE¼;
SE¼ SW¼;

Section 25:
North 145 acres of E½ W½;
W½ NE¼;
NW¼ SW¼;

Section 26:
N½ NE¼;
SW¼ NE¼;
NW¼;
S½ SW¼;
NE¼ SW¼;

Section 35:
S½ NW¼;
NE¼ NW¼;
NE¼ NE¼ NW¼;

Twp. 6 S., R. 6 E.:

Section 18:
NW¼ NW¼;
S½ SE¼ SE¼;

14391—49——69

Twp. 6 S., R. 6 E.: (continued)

Section 19:
South 30 acres in SE¼ NE¼;
SE¼ SW¼ NE¼;
South 30 acres in NE¼ SE¼;

Section 20:
SW¼ NW¼;
15 acres in SE¼ NW¼;
SW¼ NE¼ SW¼;

Section 22:
NW¼ NW¼;
N½ NE¼ NW¼;

Section 25:
NE¼;
N½ SW¼;

Section 27:
All of Section 27;

Section 28:
SW¼;
NW¼ NW¼;

Section 29:
74 acres in S½ SW¼;
W½ SW¼;
18 acres in NW¼ NE¼ Southwest of Railroad;

Section 30:
SW¼ SW¼ NE¼;

Section 31:
N½;

Section 32:
E½ E½;

Section 33:
W½ SW¼;
SW¼ NW¼;

Section 34:
20 acre parcel in Blocks 1, 2, 25, 26, and 27, Arizola Townsite;
6 acre parcel in Lot 1, Block 28, Arizola Townsite;
6 acre parcel in Lot 2, Block 28, Arizola Townsite;

Twp. 6 S., R. 7 E.:

Section 18:
SW¼;

Section 19:
NE¼;

Section 28:
NW¼;

Section 29:
SW¼ NE¼;

Section 30:
SW¼;
W½ SE¼;

Section 31:
NW¼ SW¼;
W½ NE¼ SW¼;
S½;

Section 32:
All of Section 32;

Section 33:
NE¼;
E½ NW¼;

Section 34:
NW¼;

Section 35:
W½ SW¼;

Section 36:
30.61 acres in NW¼ SW¼;

Section 31:
NE¼;

Section 32:
W½ SW¼ NW¼;
North 45 acres in W½ SW¼;

Twp. 6 S., R. 8 E.:

Section 1:
S½;
Lots 9 and 10 containing 80 acres;
S½ NW¼;

Section 5:
SE¼ NE¼;

Section 7:
SW¼ containing 158.40 acres;

Section 11:
110 acres in North part of NE¼;

Section 12:
All of Section 12;

Section 13:
E½;

Section 17:
SW¼;

Section 18:
Lot 1, containing 39.92 acres;

Section 19:
East 197 acres in SW¼;
NW¼ NE¼;
W½ SE¼ SW¼;
W½ E½ NE¼ NE¼;

Section 20:
NW¼ NW¼;
N½ SW¼;
N½ NW¼ NW¼;

Twp. 6 S., R. 6 E.: (continued)

Section 21:

NW¼;

Section 28:

E½ NW¼;

N½ NE¼;

S½ S½ NW¼ NW¼;

Section 30:

N½;

Section 32:

N½ NW¼ NW¼;

Twp. 6 S., R. 7 E.

Section 5:

277.40 acres in N½;

Section 12:

Lots 2 and 3, containing 60 acres;

Twp. 7 S., R. 5 E.,

Section 1:

SE¼;

N½ NE¼ NW¼;

SW¼ NW¼ NW¼;

NW¼ NE¼ NW¼;

Twp. 7 S., R. 6 E.;

Section 3:

North 80.8 acres of S½ SW¼;

North 80.8 acres of N½ SE¼;

Section 4:

N½;

N½ SE¼;

N½ SW¼;

Section 8:

E½;

Section 9:

N½ NW¼ comprising 74.96 acres;

N½ NE¼ SW¼;

Twp. 7 S., R. 7 E.;

Section 5:

7 acres in Northeast Corner;

Section 6:

35 acres in Northeast Corner;

203

That in accord with the 'Agreement of Land Owners to Induce the Secretary of the Interior to Undertake the Florence-Casa Grande Irrigation Project, etc.' entered into between the owners of said privately owned lands and the United States, it is hereby further specifically ordered, adjudged and decreed that suitable devices for measuring the flow of water available and susceptible of being diverted by the aforesaid dam or dams to the canals of the said Florence-Casa Grande Project (now a part of the San Carlos Project system) shall be maintained and daily or more frequent measurements of said flow shall be made; that the first 300 cubic feet per second or less of water flowing in the river at the said dam or dams, available as a whole under the several rights and priorities of plaintiff, including its immemorial right described and set up in subdivision 1 of this article and the so-called rights by purchase, and susceptible of being diverted for the said project, shall be divided and distributed, less deductions for project canal losses as hereinafter provided, sixty and six-tenths per centum thereof to the Indian lands of said project and thirty-nine and four-tenths per centum to the White lands thereof; that of the next 300 second-feet of water or less than flowing and available, less deductions on account of losses as aforesaid, fifty-one and seven-tenths per centum thereof shall be apportioned to the said Indian lands, and forty-eight and three-tenths per centum thereof to White lands; that all water available as aforesaid in excess of said 600 second-feet shall be divided, less deductions on account of losses as aforesaid, fifty-six and one-tenth per centum to said Indian lands and to said privately owned lands, forty-three and nine tenths per centum, except that during periods of high water when it shall be possible and practicable to divert water for the use of the Indian lands within said project, or some of them, by means of the Sacaton Dam, the entire amount of water diverted for the said project by the said Ashurst-Hayden Dam shall be used for the irrigation of privately owned lands and of such of said Indian lands as cannot be adequately supplied from said Sacaton Dam; that furthermore the amounts of water thus apportioned to the White lands within said project shall be distributed to said lands in the following order:

(a) Certain of said lands to the extent of some 9,752.63 acres together with 790 acres in Sections 1 and 2, Twp. 8 S., Range 8 E., G. and S.R.B. and M., being identical with those tracts which are described in the Schedules of Rights and Priorities set out under Article V hereof and identified in said article as applying to the so-called rights by purchase of plaintiff, shall have a call upon the waters available under such apportionment in the order of their priorities as set out in said schedule.

(b) The remainder of said lands, amounting to some 17,247.17 acres, shall have the next three successive calls upon such waters as are available under such apportionment and in the following order:

FIRST

Twp. 4 S., R. 9 E.:

Section 25:

S½ S½ SW¼ SW¼;

Section 35:

8.5 acres in SE¼ NE¼ SW¼;

Section 36:

4 acres in Blocks 12, A,B,C,D,E and part of 37, Florence Townsite;

West 58 acres of that portion of SE¼ south of County Road;

Twp. 4 S., R. 10 E.:

Section 19:

20 acre parcel described as follows: Beginning at Southwest Corner of NW¼ SW¼ NE¼; thence northeast to Northeast corner of SE¼ NW¼ NE¼; thence south to Southeast corner of NE¼ SW¼ NE¼; thence east to point of beginning;

Section 29:

16.33 acre parcel described as follows: Beginning at a point on the west line of the SE¼ 221 feet south of the Northwest corner of said SE¼; thence south 89° 50' East 1290 feet; thence south 42° 11' west 1030 feet; thence south 89° 50' west 600 feet to west line of the SE¼; thence north along west line of the SE¼ 760 feet to point of beginning;

Section 30:

North 83.34 acres of N½ SE¼;

Twp. 5 S., R. 8 E.:

Section 6:

S½ NE¼;

Section 7:

SW¼ NE¼;

Section 8:

South 80 acres of NE¼;

Section 9:

N½ NW¼ NW¼ SE¼;

South 25 acres of N½ NW¼;

Section 10:

East 18 acres of S½ SW¼ NE¼;

W½ NW¼ SE¼;

Twp. 5 S., R. 9 E.:

Section 1:

W½ NE¼;

North 17 acres of NE¼ NE¼;

Northwest triangular half of W½ NW¼ SE¼;

Section 29:

SW¼ SE¼ NW¼;

Twp. 6 S., R. 6 E.:

Section 19:

Two acres in Southeast corner of SE¼ SE¼ SE¼ NE¼;

Twp. 6 S., R. 8 E.:

Section 1:

S½;

Twp. 7 S., R. 8 E.:

Section 1:

SE¼ NW¼ NW¼;

SW¼ NE¼ NW¼;

N½ NE¼ NW¼;

SECOND

Twp. 4 S., R. 10 E.:

Section 11:

S½ SW¼ SW¼ SW¼;

Section 14:

N½ NW¼ NW¼ NW¼;

Section 19:

80 acre parcel North of Florence Canal in E½ NE¼;

Section 20:

SE¼ SW¼;

Section 29:

South 43 acres of N½ SW¼;

40 acre parcel North of Florence Canal in South part of W½ SE¼;

Twp. 5 S., R. 8 E.:

Section 14:

SW¼ SW¼;

Section 21:

N½ NE¼ SE¼;

Section 22:

SE¼;

Section 23:

W½ NE¼;

North 23 acres of NE¼ NE¼;

Section 25:

SW¼;

Section 27:

E½ SE¼;

Twp. 6 S., R. 9 E.:

Section 2:

Block 10, containing 2 acres in Western addition to Florence Townsite;

205

SECOND-CONTINUED

Section 9:

S½ SE¼;

Section 11:

SW¼ NW¼;

N½ SE¼ NW¼;

NW¼ NW¼ SW¼;

West 7 acres of SW¼ NW¼ SW¼;

Section 15:

80 acre parcel North of Florence Canal in NE¼ SW¼; and NW¼ SE¼;

Section 21:

W½ NW¼;

Twp. 6 S., R. 8 E.:

Section 13:

North 35 acres of NE¼ NE¼;

Section 15:

S½ S½ N½ NE¼;

Section 22:

E½ SE¼ SE¼;

Section 23:

North 30 acres of NW¼ NE¼;

E½ W½ SE¼ NE¼;

W½ S½ E½ SE¼ NE¼;

East 30 acres of NE¼ NW¼;

East 15 acres of N½ SE¼ NW¼;

W½ N½ NE¼ NW¼;

East 15 acres of NW¼ NW¼;

North 30 acres of NE¼ SW¼;

S½ SW¼ SW¼;

South 60 acres of N½ SE¼;

North 30 acres of N½ SE¼;

SW¼ SE¼;

Section 24:

W½ SW¼ SE¼;

West 30 acres of SE¼ SW¼;

Section 25:

NW¼ NE¼ SE¼;

S½ NE¼ SE¼;

Section 29:

South 12 acres of W½ NE¼ SW¼;

North 30 acres of NE¼ SE¼;

Twp. 6 S., R. 6 E.:

Section 18:

40 acres comprising NW¼ NW¼;

S½ SE¼ SE¼;

Section 19:

NE¼ NW¼ NE¼;

Section 20:

SW¼ NE¼ SW¼;

8.00 acres comprising lot 3, McMurray Addition to Casa Grande;

SW¼ SE¼ NW¼;

Section 29:

W½ SW¼;

South 4 acres of N½ N½ NE¼ SW¼;

Section 31:

NW¼ NW¼;

Section 34:

20 acres in Blocks 1, 2, 25, 26 and 27, Arizona Townsite;

Twp. 6 S., R. 7 E.:

Section 23:

N½ SW¼;

W½ SE¼;

Section 31:

N½ SE¼;

West 40 acres of S½ SE¼;

Section 32:

SW¼ NW¼ SW¼;

(Continued)

S½ SW¼ SW¼ NW¼;

E½ NW¼ SW¼;

N½ N½ N½ SW¼ SW¼;

Twp. 6 S., R. 8 E.:

Section 5:

SE¼ SE¼;

Section 11:

N½ NE¼;

N½ N½ SW¼ NE¼;

N½ SW¼ NE¼;

Section 19:

W½ SE¼ SE¼;

E½ E½ SW¼ SE¼;

Section 20:

N½ SW¼ SW¼;

Twp. 6 S., R. 9 E.:

Section 6:

44 acre parcel West of Florence Canal, in Lot 13 and SE¼ NW¼;

Twp. 7 S., R. 6 E.:

Section 6:

N½ NE¼ SW¼;

Twp. 7 S., R. 7 E.:

Section 5:

25 acres in Lot 1, North of Casa Grande Canal.

206

Twp. 4 S., R. 8 E.:

Section 36:

East 3 acres of N½ N½ N½ NW¼ SE¼;

South 15 acres of N½ NW¼ SE¼;

Twp. 4 S., R. 9 E.:

Section 25:

10 acre parcel described as follows: Beginning 200 feet north from the southeast corner of NE¼ NE¼; thence north 660 feet; thence southeast to point on west line of said NE¼ NE¼; 200 feet north from southeast corner of said NE¼ NE¼; thence east to point of beginning;

Section 26:

60 acres in SW¼ between North Side Canal and Gila River;

30 acres in N½ SE¼ between North Side Canal and Gila River;

Section 27:

S½ SW¼;

North 30 acres of S½ SE¼;

South 25 acres of S½ SE¼;

Section 28:

S½ S½;

Section 29:

S½ SW¼;

SE¼ SE¼;

S½ SW¼ NE¼;

Section 31:

E½ NW¼;

S½ NE¼;

Section 32:

NW¼ NE¼;

N½ N½ S½ N½ NW¼;

Section 33:

N½ NE¼;

80 acre parcel in S½ NE¼, North of Gila River;

N½ NW¼;

Section 34:

N½ NW¼;

Northwest triangular half of N½ S½ NW¼;

N½ N½ NE¼;

Northwest triangular half of S½ N½ NE¼;

Section 35:

20-acre parcel described as follows: Commencing at southeast corner of Section 35; thence north 160 rods; thence east 80 rods; thence south 160 rods; thence West 80 rods to point of beginning;

Section 36:

1.80 acres comprising Lots 30, 40 and 66, Florence Townsite;

5.50 acres South of County Road in NE¼ NE¼ SE¼;

S½ SE¼ NE¼ SE¼;

N½ NE¼ SE¼ SE¼;

Twp. 4 S., R. 10 E.:

Section 16:

20 acres in SE¼ between Gila River and Arizona Eastern Railway;

Section 31:

SE¼ NE¼;

N½ SE¼;

Twp. 5 S., R. 7 E.:

Section 1:

5 acres in an exact square in Southeast corner of NW¼;

Twp. 5 S., R. 8 E.:

Section 7:

NE¼ SE¼

Section 8:

SW¼;

Section 10:

N½ SW¼ SW¼ NE¼;

S½ S½ NW¼;

N½ SW¼;

Section 14:

NE¼;

Section 17:

E½;

NW¼;

Section 18:

S½ NW¼;

S½ SW¼;

SE¼;

Section 22:

SW¼;

Section 23:

SE¼ SW¼;

Section 27:

South 35 acres of SE¼ NW¼;

SW¼;

Section 34:

NE¼;

Section 35:

5.82 acres in Northeast corner of NE¼;

Twp. 5 S., R. 9 E.:

Section 1:

S½ SW¼ SW¼ NW¼;

N½ NE¼ SW¼;

Section 5:

16 acres in N½ E½;

THIRD-Continued

Twp. 3 S., R. 9 E. (continued)

Section 5:

20 acres in SW¼;

Section 7:

35 acres in E½ NW¼;

Section 9:

10 acres in W½ NE¼ NE¼ South of County Highway;

Section 10:

N½ SE¼ NW¼,

SE¼ SE¼ NW¼;

S½ NE¼ SW¼;

NE¼ NE¼ SW¼;

Section 11:

60 acres in NE¼;

South 15 acres of W½ NW¼ NW¼;

North 15 acres of E½ NE¼ NW¼;

E½ NW¼ NW¼;

Section 15:

E½ NE¼;

SW¼ NE¼;

Section 16:

All of Section 16, excepting therefrom the S½ SW¼;

Section 17:

NE¼;

S½;

Section 18:

SW¼ NW¼;

SW¼;

W½ SE¼;

SE¼ SE¼;

Section 21:

E½ NW¼;

145 acres in SW¼, north and west of Florence Canal;
(continued)

W½ NW¼ SE¼;

North 15 acres of NE¼ SE¼;

Section 22:

W½ W½ NW¼;

Section 28:

W½ NW¼ NW¼;

North 15 acres of E½ NW¼ NW¼;

W½ NW¼ NE¼ NW¼;

Section 29:

NW¼ SE¼;

West 3.2 acres of NW¼ NE¼ SE¼;

33.0 acres in SW¼ SE¼ West of Florence Canal;

Section 31:

S½;

Section 32:

SW¼;

Twp. 4 S., R. 8 E.;

Section 13:

S½[5/8 S½ NE¼ NE¼;

North 18.11 acres of SE¼ NE¼;

SE¼ NW¼;

SE¼;

Section 14:

NE¼;

Section 24:

South 14 acres of W½ SW¼ NW¼;

Section 26:

NW¼;

North 8 acres of W½ NE¼ SW¼;

S½ SW¼;

SW¼ SE¼;

Section 35:

S½ NE¼;

NE¼ NE¼ NW¼;

Twp. 4 S., R. 8 E.;

Section 19:

South 28 acres of SE¼ NE¼;

Section 20:

SW¼ NW¼;

Section 22:

NW¼ NW¼;

W½ NE¼ NW¼;

Section 23:

SE¼;

N½ SW¼;

Section 27:

All of Section 27;

Section 28:

N½ SW¼;

SW¼ SW¼;

NW¼ SE¼;

Section 31:

N½;

Twp. 4 S., R. 7 E.;

Section 12:

SW¼;

Section 13:

SE¼;

Section 15:

NW¼;

Section 19:

SW¼ SE¼;

Section 20:

SW¼;

W½ NE¼;

THIRD—continued

Section 22:
NW¼ SW¼;
W½ SE¼;
Section 23:
NW¼;
Section 25:
S½;
Section 26:
All of Section 26;
Section 27:
SE¼;
Section 28:
NW¼;
Section 30:
36.61 acres comprising Lot 3;

T. 6 S., R. 8 E.:
Section 7:
SW¼;
Section 12:
All of Section 12;
Section 13:
W½;
Section 18:
SE¼;
Section 19:
39.92 acres comprising Lot 1;
Section 19:
East 157 acres of SW¼;
NW¼ SE¼;

Section 20:
NW¼ SW¼;
E½ SW¼;
Section 21:
NW¼;
Section 29:
W½ NE¼;
E½ NW¼;
S½ S½ NW¼ NW¼;
Section 30:
N½;
Section 32:
N½ NW¼ NW¼;

Tps. 6 S., R. 9 E.:
Section 6:
70.20 acres comprising Lots 5 and 6;
West 63 acres of Lots 11 and 12;
30.20 acres comprising Lot 14;
Section 19:
60 acres comprising Lots 2 and 3;

Tps. 7 S., R. 8 E.:
Section 1:
SE¼;

Tps. 7 S., R. 9 E.:
Section 4:
N½;
N½ SW¼;
N½ SE¼;

Section 5:
S½;
Section 6:
74.98 acres comprising Lots 4 and 5.

(c) That the Secretary of the Interior or his agents in dividing the waters of the said Florence-Casa Grande Project shall see that the losses of water in the whole system of project canals (now a part of the San Carlos Project System) are shared as equitably as may be to the end that, with respect to such losses, no water right under the project shall enjoy any advantage of location, position or otherwise over any other project water right; but losses occurring in the Indian and private canals leading from said project canals shall be disregarded in the division of water hereinabove provided for; and furthermore whenever the quantity of water diverted into the canals of said project shall, in the aggregate, be so small that, after deducting the losses of transmission in the project canals and then dividing the residue between the Indian lands and the lands in private ownership as hereinabove provided for, the share allotted to the Indian rights would be too small to reach the Indian reservation, the Secretary of the Interior, or his agent in charge of said project, shall permit all of said water to be applied to the irrigation of privately owned lands in accordance with their priorities.

(4) The right to divert 603,276 acre feet of the water of the Gila River, during each irrigation season from the natural flow in said stream at the Ashurst-Hayden and Sacaton Dams above described—as of the date of priority of not later than June 7, 1924 (and for the purposes of this decree and for them only as of said date) and to the extent that such waters are available under said priority—at a total rate of diversion not exceeding 1256.6 cubic feet per second at any time during such season, for the reclamation and irrigation of the 100,648 acres of the irrigable lands of the San Carlos Project and for supplying water to the State of Arizona, and towns, villages and municipalities of that state, and federal agencies, as provided in the Act of March 7th, 1928, and in the so-called Repayment Contract bearing date the 8th of June, 1931, said 100,648 acres of project lands being more particularly described as follows:

(a) 45,898 acres of land within the Gila River Indian Reservation which have been, or may be allotted to individuals among the Indians thereof (also referred to herein as "Indian Lands"), together with 830 acres within said reservation comprising the School Farm, Agricultural Experiment Station and Administrative Area.

(b) 58,000 acres of land in private ownership of white persons (also referred to herein as "White Lands"), made up of such White Lands designated to come into the San Carlos Project by order of the Secretary of the Interior of April 25th, 1928, and August 9th, 1934, said designated lands being described as follows:

Twp. 4 S. R. 8 E:

Section 35:

S½ SW¼;

SE¼ less 2 acres in Northwest Corner;

Twp. 4 S. R. 9 E:

Section 25:

10 acres in NE¼ NE¼ between North Side Canal and Gila River;

South 34 acres of S½ S½ SW¼;

S½ S½ SE¼;

Section 26:

30 acres in N½ SE¼, between North Side Canal and Gila River;

60 acres in SW¼ between North Side Canal and Gila River;

Section 27:

S½ SW¼;

North 30 acres of S½ SE¼;

South 25 acres of S½ SE¼;

Section 28:

S½ S½;

Section 29:

S½ SW¼;

S½ SW¼ SE¼;

SE¼ SE¼;

Section 31:

E½ NW¼;

E½ NE¼;

Section 32:

N½ N½ N½ N½ NW¼;

NW¼ NE¼;

Section 33:

N½ N½;

55 acres in S½ NE¼ North of Gila River;

Section 34:

100 acres in NW¼ North of Gila River;

60 acres in N½ NE¼ North of Gila River;

E½ SE¼;

SW¼ NE¼;

S½ SE¼ SW¼;

Section 35:

SW¼ except 6.46 acres in NW Corner;

177.68 acres in E½ lying South of Gila River and North and West of the town of Florence;

Section 36:

NE¼ except 2.67 acres in NW¼ SE¼ of said NW¼;

NE¼ except West 2 acres thereof;

SW¼ except 72.5 acres in South Central part thereof;

Twp. 4 S., R. 10 E:

Section 11:

S½ SW¼ SW¼ SW¼;

Section 14:

N½ NW¼ NW¼ NW¼;

Section 15:

80 acres between Florence Canal and Gila River in NE¼;

Section 16:

140 acres in South part of Section 16 between North Side Canal and Arizona Eastern Railway and between Arizona Eastern Railway and Gila River.

Section 17:

190 acres in that part lying between North Side Canal and Gila River and east of the east line of W½ SW¼;

Section 19:

23.67 acres in SE¼ SE¼ south of Gila River;

Section 20:

21.48 acres in NW¼ south of Gila River;

S½ N½;

NE¼ SE¼;

79.99 acres in S½ SE¼;

Section 21:

W½ SW¼;

133 acres in N½ south of Gila River;

Section 28:

83.68 acres in W½ W½ North of Florence Canal;

24.50 acres in NE¼ NE¼ North of Florence Canal;

Section 29:

NE¼;

NW¼;

128.18 acres in SE¼ North and West of Florence Canal;

Section 30:

NE¼ NE¼;

E½ NW¼;

SE¼;

E½ SW¼;

E½ SE¼ SW¼;

S½ W½ SW¼ SW¼;

S½ N½ W½ SW¼ SW¼;

Section 31:

NW¼, less 4 acres of deeded highway;

NE¼;

137.47 acres in SW¼ North and West of Florence Canal;

89.38 acres in SE¼ North and West of Florence Canal;

Section 32:

108.96 acres in NW¼ North and West of Florence Canal;

Twp. 5 S., R. 7 E:

Section 1:

8 acres in an exact square in the South east corner of NW¼;

Section 12:

North 183.02 acres east of Reservation line;

Twp. 5 S., R. 8 E:

Section 1:

N½;

N½ SW¼;

North 110 acres of SE¼;

211

Section 2:

NE¼;

NE¼ NW¼;

S½ NW¼;

Section 5:

SW¼;

W½ SE¼;

68.35 acres in E½ SE¼ South and West of Gila River;

Section 6:

S½ NE¼;

N½ SE¼;

Section 7:

S½ N½;

319.92 acres in S½;

Section 8:

All of Section 8;

Section 9:

S½;

W½;

115.90 acres in NE¼ South of Gila River;

Section 10:

South 380.85 acres (Railroad Right-of-way deducted);

Section 13:

S½ NE¼;

SE¼ NW¼;

S½ SW¼ NW¼;

S½;

Section 14:

All of Section 14;

Section 15:

E½;

304.78 acres in W½ (Railroad Right-of-way deducted);

Section 16:

SE¼ SE¼ containing 37 acres;

Section 17:

All of Section 17;

Section 18:

All of Section 18, containing 641.36 acres;

Section 21:

E½;

S½ NE¼ NW¼;

SE¼ NW¼;

Section 22:

NE¼;

141.87 acres in NW¼ (Railroad Right-of-way deducted);

E½ SE¼;

Section 23:

All of Section 23;

Section 24:

All of Section 24;

Section 25:

All of Section 25;

Section 26:

All of Section 26;

Section 27:

SW¼;

142 acres in W½ (Townsite addition deducted);

304.72 acres in E½ (Railroad Right-of-way deducted);

Section 28:

NE¼;

Section 34:

162.38 acres in NE¼ (Railroad Right-of-way deducted);

Section 35:

N½;

Section 36:

N½;

E½ E½ SE¼;

Twp. 5 S., R. 9 E.:

Section 1:

10 acres in N½ NW¼ SE¼, North of Florence Canal;

Section 2:

North 89.32 acres in NE¼ West of Florence Townsite;

SE¼ SE¼;

NW¼;

4.18 acres in NW corner of SW¼;

Section 3:

NE¼;

E½ NW¼;

SW¼ NW¼;

S½ NW¼ NW¼;

NE¼ NW¼ NW¼;

North 58.01 acres of the W½ SW¼;

North 33.48 acres of the E½ SW¼;

North 18.02 acres of the NW¼ SE¼;

Section 4:

South 122.18 acres of the NE¼;

186.13 acres being the SE¼ except 3.87 acres in NE corner.

Section 8:

W½ W½ NW¼;

W½ E½ SW¼ NW¼;

NW¼ SW¼;

Section 8:

SW¼ NE¼;

Section 9:

10 acres in NE¼ NE¼;

S½ S½;

Section 10:

S½ SW¼;

NE¼ SW¼;

SE¼ NW¼;

SE¼ SW¼ NW¼;

NE¼ NW¼ SW¼;

NE¼ SE¼;

E½ NE¼;

Section 11:

N½ NW¼;

SW¼ NW¼;

N½ SE¼ NW¼;

NW¼ NW¼ SW¼;

West 7 acres SW¼ NW¼ SW¼;

81.65 acres in NE¼ North of Florence Canal;

31.75 acres in NE¼ South of Florence Canal;

Section 15:

302.09 acres in N½ West of Florence Canal;

140 acres in S½ North of Florence Canal;

Section 16:

All of Section 16;

Section 17:

S½;

NE¼;

Section 18:

SW¼;

SW¼ NW¼;

S½ SE¼;

NW¼ SE¼;

Section 19:

All of Section 19;

Section 20:

All of Section 20;

Section 21:

308.10 acres in W½ west of Florence Canal;

141.68 acres in NE¼ West of Florence Canal;

N½ NW¼ SE¼;

2.8 acres in NW¼ NE¼ SE¼ West of Florence Canal;

13.43 acres in the N½ NE¼ SE¼ East of Florence Canal;

Section 22:

9.54 acres in W½ W½ NW¼ West of Florence Canal;

39.48 acres in S½ W½ NW¼ South of Florence Canal;

Section 28:

56.63 acres in NW¼ west of Florence Canal;

Section 29:

647.86 acres West of Florence Canal (Pima Lateral Deducted);

Section 30:

632.65 acres (Pima Lateral deducted);

Section 31:

All of Section 31;

Section 32:

169.63 acres in N½ West of Florence Canal;

102.13 acres in SW¼ west of Florence Canal;

97.67 acres in SW¼ East of Florence Canal;

Twp. 6 S., R. 9 E.;

Section 13:

S½ NE¼;

SE¼;

(Continued)

SE¼ NW¼;

190 acres in SW¼ (Railroad right-of-way deducted);

Section 14:

NE¼;

SW¼;

155.80 acres in SE¼ (Railroad right-of-way deducted);

Section 15:

S½ NE¼;

S½ S½ N½ NE¼;

East 15 acres of SE¼ NW¼;

South 25 acres of SE¼ SE¼;

Section 22:

E½ SE¼ NE¼;

Section 23:

All of Section 23;

Section 24:

S½;

NW¼;

137.36 acres in NE¼ (Railroad Right-of-way deducted);

Section 25:

All of Section 25;

Section 26:

All of Section 26;

Section 35:

NE¼;

NE¼ NE¼ NW¼;

Section 36:

N½;

SE¼;

97.40 acres in SW¼ North and East of Cane Grande Canal;

213

Twp. 6 S., R. 8 E.:

Section 18:

NW¼ NW¼;

S½ SE¼ SE¼;

Section 19:

SE¼ SW¼ NE¼;

4.06 acres in SE¼ NE¼;

Section 20:

SW¼ NE¼ SW¼;

15 acres in Southeast corner of SE¼ NW¼;

Section 22:

NW¼ NW¼;

N½ NE¼ NW¼;

Section 25:

S½;

Section 27:

All of Section 27;

Section 28:

318 acres in S½ (Railroad Right-of-way deducted);

Section 29:

S½ SW¼;

30 acres in NE¼ SW¼ (Railroad Right-of-way deducted);

73.83 acres in S½ SE¼ (Railroad right-of-way deducted);

18.00 acres in NW¼ SE¼ Southeast of Railroad;

Section 30:

SW¼ SW¼ NE¼;

S½ containing 313.78 acres;

Section 31:

All of Section 31;

Section 32:

All of Section 32;

Section 33:

43.75 acres in N½ NW¼ South of Railroad;

10.33 acres in Northeast Corner of NE¼ NW¼;

S½ NW¼;

SW¼;

68.81 acres in E½ E½ North of Railroad;

39.17 acres in W½ E½ North of Railroad;

170 acres in E½ South of Railroad;

7.89 acres being Lots 6 to 7, Block 1, Monte Vista Acres;

2.00 acres being Lots 8 and 9, Block 1, Monte Vista Acres;

.14 acres being the East 20 feet of Lot 1, Block 2, Monte Vista Acres;

.86 acres being Lot 1, Block 2, Monte Vista Acres; except the East 20 feet;

8.00 acres being Lots 2 to 7, Block 2, Monte Vista Acres;

2.00 acres being Lots 8 and 9, Block 2, Monte Vista Acres;

2.00 acres being Lots 1 and 2, Block 3, Monte Vista Acres;

6.00 acres being Lots 3 to 8, Block 3, Monte Vista Acres;

1.00 acre being Lot 9, Block 3, Monte Vista Acres;

3.00 acres being Lots 10 to 12, Block 3, Monte Vista Acres;

1.22 acres being Lots 13 and 14, Block 3, Monte Vista Acres;

Section 34:

80 acres in S½ south of Railroad;

2.08 acres being Block 3, Arizola Townsite;

2.40 acres being Block 4, Arizola Townsite;

2.81 acres being Block 5, Arizola Townsite;

1.84 acres being Block 6, Arizola Townsite;

4.62 acres being Block 7, Arizola Townsite;

(Continued)

4.62 acres being Block 8, Arizola Townsite;

4.62 acres being Block 9, Arizola Townsite;

4.62 acres being Block 10, Arizola Townsite;

4.62 acres being Block 11, Arizola Townsite;

4.62 acres being Block 12, Arizola Townsite;

4.80 acres being Block 13, Arizola Townsite;

4.80 acres being Block 14, Arizola Townsite;

4.80 acres being Block 15, Arizola Townsite;

1.05 acres being Lots 1 to 4, Block 16, Arizola Townsite;

.92 acres being Lots 10 to 12, Block 16, Arizola Townsite;

.22 acres being Lot 13, Block 16, Arizola Townsite;

1.28 acres being Lots 14 to 18, Block 16, Arizola Townsite;

2.40 acres being the S½ of Block 16, Arizola Townsite;

.48 acres being Lot 10, Block 17, Arizola Townsite;

.87 acres being Lots 12 to 15, Block 17, Arizola Townsite;

.83 acres being Lots 16 to 18, Block 17, Arizola Townsite;

4.80 acres being Block 18, Arizola Townsite;

4.80 acres being Block 19, Arizola Townsite;

2.40 acres being the S½ of Block 20, Arizola Townsite;

2.40 acres being the N½ of Block 20, Arizola Townsite;

4.80 acres being the Block 21, Arizola Townsite;

4.62 acres being Block 22, Arizola Townsite;

2.31 acres being the N½ of Block 23, Arizola Townsite;

2.31 acres being the S½ of Block 23, Arizola Townsite;

3.40 acres being Lots 5 to 33, Block 24, Arizola Townsite;

11.88 acres being Lots 1 to 30, Block 28, Arizola Townsite;

5.36 acres being Lots 11, 12, S½ of 13, S½ of 14 in Block 28, Arizola Townsite;

(Continued)

214

8.35 acres being Lots —W½ 13, W½ 14, 15 and 16, in Block 28, Arizola Townsite;

11.62 acres being Lots 17 to 22, Block 28, Arizola Townsite;

39.04 acres being Block 29, Arizola Townsite;

17.46 acres being the E½ of Block 30, Arizola Townsite;

16.78 acres being the W½ of Block 30, Arizola Townsite;

17.72 acres being the E½ of Block 31, Arizola Townsite;

17.38 acres being the W½ of Block 31, Arizola Townsite;

11.30 acres being Lots 1 and 4, Block 32, Arizola Townsite;

6.18 acres being Lot 2, Block 32, Arizola Townsite;

11.73 acres being Lots 3 and 6, Block 32, Arizola Townsite;

6.89 acres being Lot 5, Block 33, Arizola Townsite;

28.99 acres being Lots 1 to 5, Block 33, Arizola Townsite;

5.77 acres being Lot 6, Block 33, Arizola Townsite;

12.62 acres being Lot 1, Block 34, Arizola Townsite;

12.48 acres being Lot 2, Block 34, Arizola Townsite;

23.24 acres being Lots 1 to 4, Block 35, Arizola Townsite;

11.78 acres being Lots 5 and 6, Block 35, Arizola Townsite;

2.00 acres being the NE Corner of Lot 1, Block 36, Arizola Townsite;

2.42 acres being Lot 1, Except 2 acres, Block 36, Arizola Townsite;

4.62 acres being Lot 2, Block 36, Arizola Townsite;

9.24 acres being Lots 3 and 4, Block 36, Arizola Townsite;

4.62 acres being Lot 1, Block 37, Arizola Townsite;

9.24 acres being Lots 3 and 4, Block 37, Arizola Townsite;

8.00 acres being Lot 1, Block 38, Arizola Townsite;

3.03 acres being the E½ of Lot 2, Block 38, Arizola Townsite;

3.03 acres being the W½ of Lot 2, Block 38, Arizola Townsite;

6.00 acres being Lot 3, Block 38, Arizola Townsite;

17.00 acres being Lots 1, 3 and 4, Block 39, Arizola Townsite;

8.00 acres being Lot 2, Block 39, Arizola Townsite;

18.04 acres being Block 40, Arizola Townsite;

18.08 acres being Block 41, Arizola Townsite;

36.81 acres being Block 43, Arizola Townsite;

20.00 acres being Blocks 1, 2, 25, 26 and 27, Arizola Townsite;

Section 35:

S½;

Section 36:

All of Section 36;

Twp. 6 S., R. 7 E.:

Section 12:

S½;

Section 13:

SE¼;

Section 18:

W½;

Section 19:

S½ NE¼;

Section 20:

SW¼

S½ SE¼;

NE¼ SE¼;

Section 21:

S½ S½;

Section 22:

S½;

Section 21:

W½;

S½ SE¼ except 8 acres in Southeast Corner thereof;

Section 23:

All of Section 23;

Section 26:

N½;

138.23 acres in SW¼ North of Casa Grande Canal;

SE¼;

Section 27:

All of Section 27;

Section 28:

S½;

NW¼;

W½ NE¼;

Section 29:

All of Section 29;

Section 30:

S½;

N½ SW¼ containing 78.61 acres;

S½ SW¼;

Section 31:

All of Section 31;

Section 32:

631.64 acres, all North of Casa Grande Canal;

Section 33:

488.15 acres, all North of Casa Grande Canal;

Section 34:

227.24 acres, All North of Casa Grande Canal;

Twp. 6 S., R. 8 E.:

Section 1:

E½ containing 478.30 acres;

39.43 acres being S½ Lots 3 and 6,

34.15 acres being the East part of Lot 11;

240.00 acres being the South part of the W½;

215

Section 6:

SE¼ SE¼;

Section 7:

SW¼ containing 158.40 acres;

Section 11:

N½ NE¼;

N½ N½ SE¼ NE¼;

W½ SW¼ NE¼;

Section 12:

All of Section 12;

Section 13:

W½;

230 acres in E½ West of Florence Canal;

Section 15:

SE¼;

Section 18:

NW¼ NW¼ (Lot 1) containing 39.82 acres;

Section 19:

S½ Containing 328.42 acres;

Section 20:

S½;

Section 21:

W½;

Section 28:

NW¼;

W½ NE¼;

17.81 acres, the West part of the SW¼ North of the Casa Grande Canal;

Section 29:

NW¼;

104.91 acres in N½ S½ North of Casa Grande Canal;

Section 30:

NE¼;

NW¼ containing 167.84 acres;

177.70 acres in S½ North of Casa Grande Canal;

Section 35:

N½ NW¼ NW¼;

Twp. 6 S., R. 9 E.;

Section 6:

358.07 acres West of Florence Canal;

Section 7:

100.60 acres in W½ West of Florence Canal;

Twp. 7 S., R. 8 E.;

Section 1:

40 acres in N½ NW¼;

81.76 acres in NE¼ North of Casa Grande Canal;

SE¼;

Twp. 7 S., R. 9 E.;

Section 1:

972.63 acres North of Casa Grande Canal;

Section 2:

457.40 acres North of Southern Pacific Railroad;

77.87 acres in W½ South of Casa Grande Canal;

Section 3:

876.64 acres North of Casa Grande Canal (Railroad right-of-way deducted.);

Section 4:

N½;

NW¼;

75.73 acres in N½ SE¼ North of Casa Grande Canal;

Section 5:

All of Section 5;

Section 8:

609.85 acres being all North of Casa Grande Canal except Lots 10 and 24, Eddy Subdivision;

10.00 acres being Lots 10 and 24, Eddy Subdivision;

Section 10:

15.35 acres being all North of Casa Grande Canal;

Twp. 7 S., R. 7 E.;

Section 5:

11.17 acres in NW¼ North of Casa Grande Canal;

Section 8:

304.91 acres, being all North of Casa Grande Canal.

(5) The right, as of the date of priority of not later than June 7, 1924, — and for the purposes of this decree and for them only as of said date— to store the waters of the Gila River in the San Carlos Reservoir of the aforesaid San Carlos Project by means of the Coolidge Dam (said Reservoir and Dam being situate within the San Carlos Indian Reservation) to the extent of the full 1,288,000 acre-feet capacity of said Reservoir at all times when said waters are available above said dam for such storage under the aforesaid priority; and the right in that relation to accomplish and control the release from said reservoir of the waters so stored and thus released to ownership, and to conduct the same down the channel of the Gila River to the Ashurst-Hayden and Sacaton diversion dams of the San Carlos Project and there to recapture and divert, and control the diversion of, the same by means of said dams for conveyance in the canals leading therefrom to the above described 100,546 acres of the lands of said Project for the reclamation and irrigation thereof, and for the supplementation of amounts available therefor at said dams from the natural stream flow under plaintiff's rights as same are decreed herein, and for State and Federal purposes under Act of March 7, 1928 as hereinbefore described.

(6) The right, as against and only against the parties to this cause, to divert from the Gila River 17,850 acre feet of water, — for the irrigation of 2992.5 acres of Indian lands at the Gila Crossing District on said Reservation— each irrigation season at a rate of diversion not exceeding 27.4 cubic feet per second of time, from the waters occurring or recurring in said river beginning at the point where the Southern Pacific Railway crosses said river in Section 13, Township 3 South, Range 4 East of Gila and Salt River Base and Meridian or between said point and a point one hundred feet above where the Salt River empties into the Gila River, at the diversion points on said reservation as now or hereafter located, as of the following dates of priority:

For	354	acres	of	said	lands	January 1st,	1873.
"	897	"	"	"	"	"	1876.
"	660	"	"	"	"	"	1877.
"	139	"	"	"	"	"	1900.
"	66.5	"	"	"	"	"	1903.

It is further provided that water rights with the priorities fixed as aforesaid are for the irrigation of said Gila Crossing Indian lands, but subject at all times, to all rights on said Gila River above said point hereinabove described, and provided also that said rights are subject to the right of the San Carlos project, to divert and use return flows, or water otherwise occurring in the river above said point and the right of said project to pump and otherwise interfere with and control the return flow from the lands within said project.

That certain of the foregoing rights, as listed under items (1), (3) and (4) above are inclusive one of the other so that diversions thereunder do not accumulate, and the amounts in acre feet per season and cubic feet per second stated in the 3rd item include those given in the 1st and those stated in the 4th item include those given in the 1st and 3rd; in each instance representing the total diversion allowable under that priority and those prior thereto as described in said items.

VII

That all Indian lands and all white lands now or hereinafter designated by the Secretary of the Interior as within the San Carlos Project and under said San Carlos Reservoir shall be entitled to share equally in all of the stored and pumped water of said Project in so far as that shall be physically feasible, and said lands shall share equally in all of the water of said Project of every nature so long as the stored and unstored water supply for said Project shall be sufficient for Project needs, and so far as that shall be physically feasible; but when, through lack of stored and pumped water, there shall be an insufficient supply of water for all of the lands of said Project lying under said reservoir, which conditions or fact shall be determined by the Secretary of the Interior or his duly authorized agent, the lands so situated, in addition to their proper share of such stored and pumped waters as may be available to the Project, shall be entitled to and have apportioned to them the unstored flow of the Gila River which is available as a whole, and susceptible of being diverted, for the Indian and White lands of the aforesaid Florence-Casa Grande Project together with the 790 acres in Sec. 1 and 2 T. 6 S., R. 6 E., G. and S.R.B. and M., hereinbefore mentioned, under and in pursuance of the various rights and priorities of the United States decreed herein for said lands, as follows, to-wit: said flow shall be divided between said Indian and White lands and distributed to such lands, whether the same shall be also included in the San Carlos Project or not, in accordance with the apportionment and division ordered and decreed in the third subdivision of Article VI hereof, and any surplus which may remain and be available in said river, under the priorities of plaintiff, for other lands (beyond those of the Florence-Casa Grande Project and said 790 acres) included in San Carlos Project under the priorities of plaintiff and provisions of this decree, shall first go to such of the Indian Lands in the San Carlos Project, and then in equitable proportion to such of the private and public lands thereof as are not also included in the Florence-Casa Grande Project and said 790 acres.

217

VIII

That the diversions of water from the Gila River by the so-called upper valleys defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservoir are decreed herein), comprising the defendant canal companies named below, with the parties defendant named in the Priority Schedule and attached tables who are decreed rights through the canals of said companies and are served thereunder, and certain individual parties defendant who are accredited with rights to divert directly from the stream through private ditches, to-wit:

Albert Canal Company, Billingsley Extension Canal Company, Black & McCluskey Canal Company, Brown Canal Company, Colvocoresses Canal Company, Calvin-Jones Canal Company, Cooper & Windham Canal Company, Cooper & Windham Extension Canal Company (under contract whereby Cooper & Windham Canal Company makes actual diversion) Curtis Canal Company, Dodge-Nevada Canal Company, Duncan Canal Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Waddle Canal Company, Hesterman Canal Company, San Jose Canal Company, Santan Canal Company, Shriver Ditch Company, Smithville Canal Company, Sunflower Canal Company, Sunset Canal Company, Tidwell Canal Company, Union Canal Company, Valley Canal Company, York Canal Company, York Cattle Company;

R. H. Angle, J. H. Brown, T. D. Burton, W. C. Cranford, J. W. Foote, R. C. Gilleland, J. H. Henderson, C. C. Hester, F. E. Ross, R. Sorien, Laura Short;

and/or their predecessors in interest, for the irrigation of the lands described in said Priority Schedule made part of Article V hereof, since their inception have been made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of said stream at points below the diversions of said defendants and also below the San Carlos Reservoir, which said rights of plaintiff are set down and referred to in said Priority Schedule, but are further identified and particularly described in Article VI and VII hereof, it being evidenced thereby that the earliest right of plaintiff is prior in time to all and every of the rights of said defendants, and certain of plaintiff's other rights are prior in time to certain of the rights of said defendants; that, however, plaintiff and said defendants, in recognition of the desirability of making it practicable for said defendants to carry on the irrigation of said upper valley lands to the extent to which the areas to which their said rights apply heretofore have been irrigated and so that the said San Carlos Act shall inure in part to their benefit and this suit may be compromised and settled, have agreed that the following provisions shall be and they are hereby embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(2) That on the first day of January of each calendar year, or as soon thereafter as there is water stored in the San Carlos Reservoir, which is available for release through the gates of the Coolidge Dam for conveyance down the channel of the Gila River and for diversion and use on the lands of the San Carlos Project for the irrigation thereof, then the Water Commissioner, provided for herein, shall, to the extent and within the limitations hereinafter stated, apportion for the ensuing irrigation year to said defendants from the natural flow of the Gila River an amount of water equal to the above described available storage, and shall permit the diversion of said amount of water from said stream into the canals of said defendants for the irrigation of said upper valleys lands in disregard of the aforesaid prior rights of plaintiff used on lands below said reservoir; the diversion of said amount of water by said defendants to be in accord with the priorities as between themselves stated in said Priority Schedule and for the irrigation of the lands covered by the rights accredited to said defendants in said Priority Schedule and the quantity of water permitted to be taken by said defendants in disregard of prior rights of the United States below is in addition to and not exclusive of the rights of said defendants to take from the stream in the regular order of their priorities as shown by the Priority Schedule, but of course within the duty of the water limitations of this decree; that if and when at any time or from time to time in any year, water shall flow into said reservoir after said date of first apportionment and shall be stored there and become added to the available stored water in said reservoir, the said commissioner shall make further and additional apportionments to said defendants of the natural flow of said stream as the same is available at the diversion points of said defendants, which said apportionments shall in turn correspond with and be equivalent in quantity to the amount of such accessions or newly available stored water supply; that in calculating apportionments of the stored water supply the Water Commissioner shall make appropriate deductions for losses for evaporation, seepage or otherwise that may be suffered between the time of the apportionment and that of the diversion of a corresponding quantity of water

from the stream; that such apportionments, corresponding with net accessions during each annual period after first apportionment, shall be made by said Water Commissioner at least as frequently as once per calendar month (provided accessions to stored supply have occurred during that period) and at such more frequent intervals as the conditions in his judgment may demand—his decisions in these regards to be subject to summary review by the Court as provided in Article XII hereof—and said Water Commissioner shall see to it that his said apportionments, when made, forthwith shall be placed of record herein and so posted or published as to inform all interested parties in that regard with reasonable promptness and despatch; it being herein explicitly provided that no apportionment or apportionments, made during any calendar year, shall carry over or be available in any manner for the succeeding year; that the diversions made by said defendants of the natural flow of the Gila River thus apportioned to them in disregard of the said prior rights of plaintiff shall be regulated by the Water Commissioner (under the authority and powers given him by this decree and/or by such further orders of the Court as may be made in that relation) in accord with the rights and priorities accredited to each of said defendants in said Priority Schedule, provided always that such diversions shall be limited to the amount of water then apportioned, as aforesaid, and in any event, during each irrigation season, do not and shall not exceed the total amount of water called for under the right accredited in said Priority Schedule to any given defendant, namely: 6 acre feet per acre for the irrigation season as defined in Article V hereof; And provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico and a gauging station located in the San Francisco River immediately above its confluence with the Gila River and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona; and the Water Commissioner shall determine what diversions are permissible and reduce diversions in the inverse order of their priorities when and to the extent necessary to accomplish the aforesaid result. The aforesaid measurements shall include the whole flow of the stream, including floods, at the three points of measurement, and no allowance shall be made for accretions or additions to the flow between the point of measurement at Red Rock Box Canyon, and the confluence of the Gila and San Francisco Rivers, and in turn between the confluence of the Gila and San Francisco Rivers, and the aforesaid gauging station at the Southern Pacific Railway bridge. Said method of measurement is adopted as sufficiently accurate for practical purposes and as better suited for administering this decree than any more refined method of determining actual consumptive use.

(3) Upon agreement made by the owner of any right set forth in the Priority Schedule for land in the Safford Valley water may be diverted by the owner of land in the Duncan Valley within the duty of water in this decree set forth and within the apportionment of water for said Duncan Valley land in disregard of such Safford Valley right or rights, and that such waiver shall in no way deprive the Safford Valley lands thus waiving of their full apportionment of water herein provided for based on water stored in the San Carlos Reservoir or their full right to take from the stream, in accordance with their priority and within the duty of water fixed by the decree as against water rights of the United States held on account of the San Carlos Project, but the right of the United States to insist upon its priorities as defined and codified herein as against Duncan Valley Lands shall not be abridged by this provision.

(4) That water released at the will of the plaintiff and for the purposes of the plaintiff from the San Carlos Reservoir at any time after the date of this decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date of such releases, and available as a basis for the above described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

(5) PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, of or as soon as apportionments previously made to them have been consumed, shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made under and in accord with the rights and priorities set down in Article V, and the Priority Schedule made part hereof, and Article VI of this decree to-wit: in accord with their several priorities as same are set down in said Priority Schedule and subject to the prior rights of plaintiff as same are referred to therein and further described in Article VI of this decree.

IX

(1) That the defendant Kennecott Copper Corporation shall be entitled, as of the dates of priority set down in the Priority Schedule made part of Article V hereof, for industrial, municipal, domestic and related beneficial purposes, to divert from the underground waters of the Gila River by means of its pumps, as same are or may be located within the lands described in said Priority Schedule under the heading "Point of Diversion," during the annual period beginning January 1st of each year, the amounts of water stated in said schedule, at the rate of diversion in cubic feet per second there given; subject, however, to the proviso that the total amount of water diverted and maximum rate of diversion, under the rights for such purposes accredited to said defendant in said Priority Schedule as of the priority dates of 1878, 1879, 1880, 1884, 1885, 1887, 1890, 1895, 1906, 1908, and 1909, shall not exceed the quantity of water in acre feet per annum or rate of diversion in cubic feet per second stated for the right of 1909, to wit: 16,221 acre feet and 22.22 cubic feet per second; That the rights for industrial, municipal, domestic and related purposes accredited to said defendant as of the dates of priority named below were first initiated, and thereafter perfected, by the diversion and application of the waters of the Gila River, through canals leading from the stream, to the irrigation of those certain acreages of the lands described below which are set down opposite said dates of priority, which said dates respectively represent the year in which said acreages were first irrigated, to-wit:

Date of Priority	Number of Acres	Area Containing Lands Thus Irrigated.
1878	65.00	SE¼ and SE¼ SW¼, Section 9;
1879	95.00	E½ SW¼, Section 10;
1880	130.00	NW¼ SW¼, S½ SW¼ and SW¼ SE¼, Section 14;
1884	165.00	SE¼, NE¼ and NW¼ Section 15;
1885	60.00	NE¼ Section 16; and
1887	60.00	N½ NW¼ and N½ NE¼ Section 23;
1890	10.00	All in Township 6 South, Range 18 East of the Gila
1895	40.00	and Salt River Base & Meridian.
1906	15.00	
1908	153.00	

That the use for irrigation under said rights, when the pumps and plant of said defendant were put in operation in the year 1909, was changed and transposed into uses for industrial, municipal, domestic and related purposes, and the waters called for under said rights and priorities, or so much thereof as was available, since have been diverted from the stream or the underground waters thereof by means of the pumps of said defendant and continuously and beneficially applied to said purposes;

(2) That the requirements of said defendant each year for the above described purposes demand that it divert from the underground waters of the Gila River, in so far as same can be made available in that relation, at the continuous rate of ten thousand gallons per minute, or 22.22 cubic feet per second; same being equivalent by volume measurement to a maximum of 16,221 acre feet per annum; that prior to the construction of the San Carlos Reservoir and the storage of water therein the natural flow of the Gila River at and/or in the vicinity of the reduction plant and pumps of said defendant maintained an underground water plane, which when pumped from to meet the said requirements of defendant, had averaged an approximate minimum elevation, as gauged at said defendant's test well at that place, of 1920 feet above sea level (Nevada Consolidated Copper Company datum) and an approximate maximum elevation of 1930 feet above sea level (datum idem); that said diversions by said defendant then were, and since to the extent undertaken have been, made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of the Gila River at points below the diversions of said defendant, and also below the San Carlos Reservoir, which said rights of plaintiff

are set down and referred to in Article V hereof and the Priority Schedule included therein, and further defined in Articles VI and VII hereof, it being evidenced hereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights and thereby are credited with dates of priority earlier than those of said defendant; that, however, plaintiff and defendant by way of consent hereto, in recognition of the desirability of making it practicable for said defendant to continue and further carry on its operations to the extent of its aforesaid requirements and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(3) That said defendant shall be entitled to divert, by means of its said pumps as they now exist or may be replaced, so much of the underground waters of the Gila River as may be available at its said pumps and as will meet its said requirements—but not to exceed the amount of 16,221 acre feet during each annual period reckoning from January 1st of each year as aforesaid, and limited to a maximum rate of diversion of 10,000 gallons per minute, viz. 22.22 cubic feet per second—in disregard of the said prior diversions rights of plaintiff below said San Carlos Reservoir as same are set out and defined in this decree as aforesaid; that if during those periods when no appreciable releases of water from the San Carlos Reservoir are being made into the channel below the Coolidge Dam, the said diversions of defendant by means of said pumps (limited to the amounts required for beneficial application to the above described industrial, municipal, domestic and related purposes and in any event to the said 16,221 acre feet per year and 22.22 cubic feet per second) shall cause the pumping water plane to fall below 1920 feet above sea level, as gauged at said test well of defendant (Nevada Consolidated Copper Company datum), or some other mutually agreed upon point and datum, then, if there is any natural flow in the Gila River at the point where said stream enters the San Carlos Reservoir, so much thereof (or so much as is available if the amount is insufficient) as will bring the level of said pumping water plane, as gauged at said test well of defendant, or other point aforesaid, to the average of the approximate maximum and minimum elevations aforesaid to wit: 1926 feet above sea level (datum idea), will be allowed to flow through said reservoir into the channel below—if the storage level in said reservoir is high enough physically to permit its release through the Coolidge Dam—said operations to be of simultaneous character in that releases through said Coolidge Dam, equivalent to the natural flow entering the reservoir or such portion thereof as may be sufficient for the above described purposes, shall be made forthwith when it is determined (mutually by the plaintiff and defendant, or in case of disagreement by the Water Master, whose decision may be reviewed as provided in Article XIV hereof) that the pumping water plane, under the conditions above described, has fallen below the 1920 feet level aforesaid; that such releases of natural flow through the Coolidge Dam shall be accomplished so as to make the most practical and workmanlike use of the amount available for the purposes thereof, taking into consideration the vital necessity of avoiding in so far as possible the waste of water into the steam below the gravels in which the pumping water plane is being maintained;

(4) That the diversions of water from the Gila River by said defendant and its predecessors in interest for the irrigation of the lands described in the Priority Schedule for which said defendant is accredited rights for irrigation as of the dates of priority of 1908, 1916, and 1920, since their inception have been made under rights which were and are junior and subject to those certain and extensive rights of plaintiff to divert the waters of said stream at points below the said diversions of defendant; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further defined in Article VI and VII hereof, it being evidenced thereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendant; that, however, plaintiff and defendant, by way of consent hereto and in recognition of the desirability of making it practicable, in so far as possible, for said defendant to carry on the irrigation of its said lands to the extent of the acreages to which its said rights of 1908, 1916 and 1936 apply, and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

221

(5) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is apportioned to the so-called upper valleys water more amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to the defendant Kennecott Copper Corporation, from the natural flow of said river as hereinafter defined, for the irrigation of its said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon, said defendant shall be entitled to divert--in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid--at the points of diversions and by means of the ditches ascribed to it in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to it as aforesaid, as can be beneficially applied to the irrigation of the lands to which said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendant's said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendant, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River and San Carlos River at the points where said streams enter the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendant as may occur, but subject to such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendant (if any there are) between said Coolidge Dam and said diversion points of defendant.

(6) PROVIDED ALWAYS, that the foregoing provisions of this Article IX are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the decree, then the diversions of defendant, as against all the other parties in this cause, whether for industrial, municipal, domestic and related purposes as described in subdivisions (1) to (3) above--or for irrigation as described in subdivisions (4) and (5) if or when its apportionment in that relation also has been consumed--shall be subject to and be made in accord with its priorities as same are stated in the Priority Schedule and not otherwise, saving and excepting only that its diversions for said industrial, municipal, domestic and related purposes as against plaintiff's prior rights of diversion below shall still be regulated and controlled as provided in subdivisions (2) and (3) of this Article; subject to the further proviso, however, that the natural flow of the Gila River as measured where it enters the San Carlos Reservoir, or drafts upon it in conformity with priorities against later rights above, will not be available in any event below said reservoir unless the storage level therein is sufficiently high to permit its release through the Coolidge Dam. It is further provided that the pumped diversions of said defendant when being made under subdivisions (2) and (3) of this Article, at times of greatest peak loads, may exceed by 10% the rate of 22.22 cubic feet per second stated above, if water therefor is available at said pumps, but that the total diversions for any year (January 1st to December 31st inclusive) in such event shall still be limited to 16,221 acre feet.

Y X

(1) That the diversions of water from the Gila River by defendants Joseph J. Anderson, Grady L. Herring and T. H. B. Claspis, and their predecessors in interest for the irrigation of the lands described in the Priority Schedule made part of Article V hereof, for which said defendants are accredited rights for irrigation as of the dates of priority named in said schedule, since their inception have been made under rights which were and are junior and subject to those certain and extensive rights of plaintiff to divert the waters of said stream at points below the said diversions of defendants; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further identified in Articles VI and VII hereof, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendants; that, however, plaintiff and said defendants, by way of consent hereto and in recognition of the desirability of making it practicable in so far as possible for said defendants to carry on the irrigation of their said lands to the extent of the acreages to which their said rights apply and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to wit:

(2) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to said defendants, from the natural flow of said river as hereinafter defined, for the irrigation of their said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon, said defendants shall be entitled to divert--in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid--at the points of diversion and by means of the ditches ascribed to them in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to them as aforesaid, as can be beneficially applied to the irrigation of the lands to which their said rights apply; said diversions so of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in so much as the waters flowing in the Gila River at defendants' said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendants, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River at the point where said stream enters the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendants as may occur, but subject to such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendants (if any there are) between said Coolidge Dam and said diversion points of defendants.

(3) PROVIDED ALWAYS, that the foregoing provisions of this Article X are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by reason of lack of avilable storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the Decree, then the diversions of the defendants above named, as against all the other parties in this cause--if or when their apportionment in that relation also has been consumed--shall be subject to and be made in accord with their priorities as same are stated in said Priority Schedule and not otherwise; subject to the further proviso, however, that the natural flow of the Gila River, as measured where it enters the San Carlos Reservoir, will not be available below said reservoir on occasions when the storage level therein is not sufficiently high to permit its release through the Coolidge Dam.

XI

That the lands within the Gila River watershed for the irrigation of which rights are decreed herein are arid or semi-arid in character and require irrigation in order that crops of value may be produced thereon; that except as herein specifically provided no diversion of water from the natural flow of the stream into any ditch or canal for direct conveyance to the lands shall be permitted as against any of the parties herein except in such amount as shall be actually and reasonably necessary for the beneficial use for which the right of diversion is determined and established by this Decree, to-wit: shall be made only at such times as the water is needed upon their lands and only in such amounts as may be required under the provisions hereof for the number of acres then being irrigated; that in cases where by this Decree water is allowed to be diverted by and through any ditch by the owner thereof for another party, the terms of the contractual relations existing between them are not intended to be determined herein; that wherever the total area under a particular canal is decreed more than one water right, each having the same or different priorities or in its different parts having different rights and priorities, the total area may have used upon it all of its several rights in the order of their priorities, subject only to the requirement that no greater net draft on the stream be made than if each right in the order of its priority were used only on the particular lands for which it was originally acquired or reserved; that rotation, which is a well known, recognized and effective practice in irrigation administration (constituting in effect the combining of flows allowed to be diverted from a given stream under two or more rights so as to provide for the alternate use of more adequate irrigation heads as between neighboring or other ditches taking from such stream), shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economies in the use of water, or in order to give to each ditch or water user a more advantageous method of irrigation, providing that such rotation shall not injuriously affect any of the rights determined or allowed by this decree; that the Water Commissioner provided for herein shall arrange for and enforce such rotation, but shall consult with, and endeavor to obtain the agreement of, such water users as in his judgment should resort thereto, and shall embody his action in this regard into such reports as he may make or be required to make to the Court herein; that if no valid objection thereto be made by other water users, an owner of any right decreed herein, when the allowable diversion thereunder in the judgment of the Water Commissioner does not constitute an adequate irrigation head for his lands, may with or without agreement for rotation, when permitted by said Water Commissioner, divert a larger head or flow into his ditch for short periods of time in lieu of the smaller flow allowed to him under his said right, providing always that such use shall not exceed for the irrigation season the amount in acre-feet herein specified and allowed to be diverted from the stream for his lands; that appropriations and priorities of the same date rank as having rights of the same standing, and as having a simultaneous call upon the stream source in the proportion which said rights, as decreed herein, bear to each other in amounts entitled to be diverted thereunder; that any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles, to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other parties as the same are defined herein.

XII

That a Water Commissioner shall be appointed by this Court to carry out and enforce the provisions of this decree, and the instructions and orders of the Court, and if any proper orders, rules or directions of such Water Commissioner, made in accordance with and for the enforcement of this decree, are disobeyed or disregarded he is hereby empowered and authorized to cut off the water from the ditch then being used by the person so disobeying or disregarding such proper orders, rules or directions; promptly reporting to the Court his said action in each case and the circumstances connected therewith and leading thereto; that whenever the necessities of the situation appear to the Court so to require, the Court shall authorize the employment by the Water Commissioner of such person or persons to assist that officer as to the Court may seem necessary to carry out properly the provisions of this decree and the orders of the Court; that the term of employment, expenses and compensation of said Water Commissioner and his assistants, the payment thereof and the means and methods for securing funds with which to pay the same, shall be fixed by orders which the Court may hereafter from time to time make; that any person, feeling aggrieved by any action or order of the Water Commissioner, in writing and under oath, may complain to the Court, after service of a copy of such complaint on the Water Commissioner, and the Court shall promptly review such action or order and make such order as may be proper in the premises; that the owner or owners of each ditch or canal herein authorized to divert water from the natural flow of the Gila River for direct conveyance to and irrigation of lands, unless specifically excused by the Court or Water Commissioner, shall at his own expense install and at all times maintain at any appropriate place at or near the head of said ditch,

a reliable and readily operated regulating headgate and a measuring box, flume or other device which may be locked and set in position—the same to be approved by the Water Commissioner—so that the water diverted into said ditch or canal at any and all times may be regulated and measured; that upon failure of any owner or owners to install structures of the above described character on or before one year from the date of this decree or on or before such different day as the Court or Water Commissioner shall set or determine—after due notice from the Water Commissioner so to do—the said Water Commissioner is herein authorized to cut off diversions of water into said ditch or canal until such devices and structures shall be installed and maintained

XIII

That each and all of the parties to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through or under them and their successors, are hereby forever enjoined and restrained from asserting or claiming—as against any of the parties herein, their assigns or successors, or their rights as decreed herein—any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree; that nothing herein shall prejudice the rights of any of the parties hereto or of their grantees, assigns or successors in interest, under any transfer or legal succession in interest after the commencement of this action, to any of the rights hereby adjudicated; that except as hereinbefore mentioned or otherwise stated, the provisions of this Decree shall bind, and inure to the benefit of, the grantees, assigns and successors in interest of the owners of rights and parties hereto, whether substituted as parties or appearing in this cause or named herein or not; that the several parties to this suit shall pay their own costs in this action as directly incurred or authorized by them respectively, provided that any compensation of the Water Commissioner, or amounts shown to be owing to him or the reporter, if any there be, shall be paid in such manner, at such times and by such parties as may be ordered by the Court; that the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.

Done in Open Court this twenty ninth day of June, 1935.

ALBERT M. STARR,
Judge.

Supreme Court, U.S.
FILED
DEC - 8 2006
OFFICE OF THE CLERK

Nos. 06-173 and 06-333

In the Supreme Court of the United States

SAN CARLOS APACHE TRIBE, PETITIONER

v.

STATE OF ARIZONA, ET AL.

PHELPS DODGE CORPORATION,
CONDITIONAL CROSS-PETITIONER

v.

SAN CARLOS APACHE TRIBE, ET AL.

ON PETITION AND CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

In a general stream adjudication, the Arizona Supreme Court held that the San Carlos Apache Tribe and the United States on the Tribe's behalf are precluded, under res judicata, from asserting rights to the Gila River mainstem beyond those awarded in the 1935 Globe Equity Decree, but that the Decree does not likewise preclude claims to Gila River tributaries. The court also held that the Tribe may not assert, in the state-court general adjudication, a defense to res judicata based on the United States' alleged inadequate representation of the Tribe in the Globe Equity proceedings, because any collateral challenge to the Decree must be brought in the federal court that entered the Decree.

The question presented in the Tribe's petition in No. 06-173 is whether the Arizona Supreme Court erred in declining to hear, on comity grounds, the Tribe's res judicata defense.

The question presented in the conditional cross-petition in No. 06-333 is whether the Arizona Supreme Court erred in holding that the Globe Equity Decree is limited to claims on the Gila River mainstem, as opposed to its tributaries.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 8
Conclusion 20

TABLE OF AUTHORITIES

Cases:

Arizona v. *California*, 460 U.S. 605 (1983) 7, 14, 18
Arizona v. *San Carlos Apache Tribe*, 463 U.S. 545 (1983) 4, 5, 8, 11, 12, 14
Colorado River Water Conservation Dist. v. *United States*, 424 U.S. 800 (1976) 11
Cox Broad. Corp. v. *Cohn*, 420 U.S. 469 (1975) 9, 10
Dodd v. *Hood River County*, 59 F.3d 852 (9th Cir. 1995) 16
Feller v. *Brock*, 802 F.2d 722 (4th Cir. 1986) 13
Gila River Pima-Maricopa Indian Cmty. v. *United States*, 684 F.2d 852 (Ct. Cl. 1982) 2
Graver Tank & Mfg. Co. v. *Linde Air Prods. Co.*, 336 U.S. 271 (1949) 18
Heckman v. *United States*, 224 U.S. 413 (1912) 14
International Union v. *Karr*, 994 F.2d 1426 (9th Cir. 1993) 17

Cases—Continued: Page

Lapin v. *Shulton, Inc.*, 333 F.2d 169 (9th Cir.), cert. denied, 379 U.S. 904 (1964) 13
May v. *Parker-Abbott Transfer & Storage, Inc.*, 899 F.2d 1007 (10th Cir. 1990) 17
Nevada v. *United States*, 463 U.S. 110 (1983) .. 7, 14, 15, 18
Northern Cheyenne Tribe v. *Adsit*, 721 F.2d 1187 (9th Cir. 1983) 5, 8, 12
Radio Station WOW v. *Johnson*, 326 U.S. 120 (1945) ... 10
Simmons v. *New Pub. Sch. Dist. No. 8*, 251 F.3d 1210 (8th Cir. 2001) 17
Treadaway v. *Academy of Motion Picture Arts & Scis.*, 783 F.2d 1418 (9th Cir. 1986) 13
Young-Henderson v. *Spartanburg Area Mental Health Ctr.*, 945 F.2d 770 (4th Cir. 1991) 17

Statutes and rules:

McCarran Amendment, 43 U.S.C. 666 5
28 U.S.C. 1257(a) 9, 10
Sup. Ct. R. 10 16
Fed. R. Civ. P. 60(b) 12

Miscellaneous:

H.B. 2276, 42d Legis., 1st Sess. (Ariz. 1995) 6
Restatement (Second) of Judgments (1982) ... 7, 15, 16, 17
S. Rep. No. 133, 102d Cong., 1st Sess. (1991) 2

In the Supreme Court of the United States

No. 06-173

SAN CARLOS APACHE TRIBE, PETITIONER

v.

STATE OF ARIZONA, ET AL.

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v.

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ON PETITION AND CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Arizona Supreme Court (Pet. App. 1a-53a) is reported at 127 P.3d 882. The Arizona Supreme Court's order denying reconsideration (Pet. App. 54a-61a) is reported at 134 P.3d 375.

JURISDICTION

The opinion of the Arizona Supreme Court was entered on February 9, 2006. The Arizona Supreme Court

denied reconsideration on May 3, 2006 (Pet. App. 54a-61a). A petition for a writ of certiorari was filed on August 1, 2006. A conditional cross-petition for a writ of certiorari was filed on September 5, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

1. The Gila River originates in the mountains of New Mexico and flows west across Arizona, eventually meeting the Colorado River (when flows are sufficient) at the Arizona-California border. The most significant project on the river is the San Carlos Federal Irrigation Project, which includes the Coolidge Dam and San Carlos Reservoir, a massive reservoir designed to store flood waters for downstream irrigation. See generally *Gila River Pima-Maricopa Indian Cmty.* v. *United States*, 684 F.2d 852, 859 (Ct. Cl. 1982). The United States constructed the Coolidge Dam and San Carlos Reservoir on land within the San Carlos Apache Reservation. See generally S. Rep. No. 133, 102d Cong., 1st Sess. 5 (1991).

In October 1925, the United States filed an action in federal district court in Globe, Arizona (styled "Globe Equity No. 59") to secure water rights for the project and associated Indian reservations. See OSM No. 293.[1] The United States asserted various rights on behalf of the Indians of the Gila River Indian Reservation, *id.* at 4-6, the Indians of the San Carlos Apache Reservation, *id.* at 6-7, and non-Indian owners of relevant lands, *id.* at 7-19. The United States named as defendants the Gila Valley Irrigation District and numerous canal companies and individuals with claims to the "Gila River and

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[1] The parties filed thousands of documents with the Office of the Special Master (OSM). See Pet. App. 113a. Each document was assigned an "OSM No." See *id.* at 117a n.6.

its tributaries in the District of Arizona and in the District of New Mexico." *Id.* at 3-4, 21-22.

The United States asserted that it "reserved and appropriated" and was "entitled to use * * * for said San Carlos irrigation project and * * * on said Indian Reservations * * * all of the waters of the said Gila River and its tributaries." OSM No. 293, at 21. With respect to petitioner, the San Carlos Apache Tribe, the complaint stated that the Tribe had appropriated "waters of the Gila River and its tributary * * * the San Carlos river." *Id.* at 6-7. The United States prayed, *inter alia*, for a "decree determin[ing] the relative rights of the parties hereto * * * to and of the waters of the said Gila River and its tributaries." *Id.* at 23.

In 1927, the United States filed an amended complaint narrowing the scope of the adjudication. See OSM No. 346. The United States no longer asserted claims to the "Gila River and its tributaries," OSM No. 293, at 3-4, but instead asserted claims "in the waters of the Gila River" alone. OSM No. 346, at 31. And while the original complaint asserted the United States' rights against a class of defendants with claims to the Gila River or its tributaries, the amended complaint asserted the United States' rights against a class of defendants with claims to "the Gila River" alone, between various points. *Id.* at 32-33.

In amending its claims on behalf of the Apache Indians, the United States likewise withdrew claims to tributaries. The amended complaint asserted that the Apaches were entitled "to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila river, excluding the San Carlos River." OSM No. 346, at 21; see *id.* at 21-22.

The parties to Globe Equity No. 59 entered into a consent decree (the Globe Equity Decree) in 1935. Pet. App. Supp. 103-225; see OSM No. 4. The Decree recognizes the dismissal, "without prejudice," of numerous parties determined to have "claims and rights, if any, * * * outside the scope of [the adjudication] as outlined and defined in the amended complaint." Pet. App. Supp. 121; see OSM No. 4, at 9. Among the parties so dismissed without prejudice was conditional cross-petitioner Phelps Dodge. *Ibid.*; see OSM No. 469.

As among parties not dismissed, the Decree contains a schedule of rights and priorities. Pet. Supp. App. 124-198. Among other things, the Decree grants the United States the right to divert, from the Gila River, 210,000 acre feet per year to irrigate up to 35,000 acres of "irrigable Indian allotments" on the Gila River Indian Reservation. The Decree also established the United States' right "to store the waters of the Gila River in the San Carlos Reservoir" for the reclamation of approximately 100,000 acres of land below the reservoir. *Id.* at 210, 217.

With respect to the Apache Indians, the Decree established the United States' right to divert 6000 acre feet per year from the Gila River for the "reclamation and irrigation" of 1000 acres of irrigable land. Pet. Supp. App. 198. The Decree concludes by stating that the parties are "forever enjoined and restrained from asserting or claiming" against each other "any right, title or interest in or to the waters of the Gila River" except the rights specified in the Decree. *Id.* at 225.

2. In the mid-1970s, various water-rights claimants filed actions in Arizona state court to resolve conflicting claims. See *Arizona* v. *San Carlos Apache Tribe*, 463 U.S. 545, 557-558 (1983). Those proceedings evolved

into the present general stream adjudication to determine all rights in the Gila River system. *Ibid.* The United States was joined as a defendant under the McCarran Amendment, 43 U.S.C. 666. The United States filed numerous claims on its own behalf and on behalf of Indians on federal reservations. On behalf of petitioner, the United States asserted rights to divert water from the Gila River, the San Carlos River, and various other waters. Pet. Supp. App. 82, 88-90. Petitioner separately filed similar claims on its own behalf. *Id.* at 42, 47-49.[2]

Before filing claims in the state-court general adjudication, petitioner and other Indian Tribes filed suit in federal district court, seeking removal of the Indian water claims to federal district court and an independent determination of their claims in federal court. *San Carlos,* 463 U.S. at 558. In 1983, this Court held that, in deference to Arizona's general stream adjudication, the federal courts should abstain from adjudicating water rights covered by the state-court adjudication. See *id.* at 569-570. On remand, the Ninth Circuit stayed the federal-court actions brought by petitioner and other Tribes. *Northern Cheyenne Tribe* v. *Adsit*, 721 F.2d 1187, 1189 (1983).

In 1990, petitioner intervened in the federal-court Globe Equity proceedings, in which the court that entered the consent decree in 1935 continues to interpret and enforce the Decree. Pet. App. 44a, 46a. In doing so, petitioner noted that it did not "seek to litigate rights to additional Gila River water in this matter." *Id.* at 44a.

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[2] In asserting rights to the Gila River mainstem, the United States acknowledged that such claims were subject to a ruling on the preclusive effect of the Globe Equity Decree. See Pet. Supp. App. 82; Statement of Claimant No. 39-64,259.

In 1995, the Arizona legislature requested that the state-court Gila River litigation grant early consideration to claims associated with Indian reservations and other federal lands, in order to reduce the cost and complexity of the adjudication. See H.B. 2276, 42d Legis., 1st Sess. § 24(C) (Ariz. 1995). In accord with that request, the trial court directed interested parties to file summary judgment motions, as appropriate, raising preclusion arguments concerning Indian claims. See Pet. App. 112a-115a.

A special master determined that the Globe Equity Decree should be accorded preclusive effect as to claims asserted by or on behalf of the Gila River Indian Community, but that the Decree was limited in scope to the Gila River mainstem, not its tributaries. Pet. App. 145a-147a, 160a-164a, 179a. The trial court affirmed, *id.* at 90a, and held that its preclusion ruling applied to petitioner to the same extent that it applied to the Gila River Indian Community, *id.* at 64a.

3. On interlocutory appeal, the Arizona Supreme Court affirmed the determinations discussed above. Pet. App. 1a-53a. The court noted that res judicata generally prevents re-litigation of the same cause of action, and it assumed without deciding that whether two claims are part of the same cause of action turns on whether they comprise part of the same transaction. *Id.* at 13a-15a. Under that test, the court observed, "claims to the Gila River mainstem asserted by the United States in the Globe Equity litigation would not seem to be part of the same 'transaction' as its claim to the tributaries," in part because the mainstem and tributaries are "spatially distinct." *Id.* at 15a.

The Arizona Supreme Court rested its decision, however, on the different ground that "parties to a consent

decree can agree to limit the decree's preclusive effects" by agreeing "in terms or in effect" to that outcome. Pet. App. 16a (quoting Restatement (Second) of Judgments § 26(1)(a) (1982) (Restatement)). The court concluded that the parties to the Globe Equity Decree so agreed because the Decree "adjudicated only claims to the Gila River mainstem and not to its tributaries." *Id.* at 26a. As support, the court explained that the United States' amended complaint omitted the claims that its original complaint had asserted to the tributaries; the United States dismissed without prejudice all defendants who claimed water solely from the tributaries; and the Decree itself grants rights only as to the Gila River, not the tributaries. *Id.* at 19a-23a.

The Arizona Supreme Court declined, however, to address petitioner's argument that it was not bound by the Globe Equity Decree at all because the United States allegedly represented petitioner inadequately in the Globe Equity proceedings (to which petitioner was not a named party). Pet. App. 36a-47a. While observing that this Court "has twice rejected similar arguments in [analogous] cases," *id.* at 39a (citing *Nevada* v. *United States*, 463 U.S. 110, 135 (1983); *Arizona* v. *California*, 460 U.S. 605, 626, 628 n. 21 (1983)), the Arizona Supreme Court determined that it need not decide whether this case is "factually distinguishable" from those cases, because the "doctrine of comity compels" the court to "refrain from addressing the Tribe's arguments," *id.* at 40a.

The Arizona Supreme Court reasoned that "a court should not assume to disturb another court's disposition of a controversy unless there are good reasons for doing so." Pet. App. 42a (quoting Restatement § 78 cmt. a). Because petitioner intervened in the Globe Equity pro-

ceedings for purposes other than challenging the United States' representation, the court found it clear that petitioner had "consciously declined to adjudicate its 'inadequate representation' claim in the forum responsible for issuing, interpreting, and enforcing the Decree." *Id.* at 44a. Under those circumstances, the Arizona Supreme Court concluded, "[n]otions of comity would be seriously undermined if [it] were to permit the Tribe to assert [in the state court proceedings] the very arguments * * * that it has explicitly pretermitted in the federal court." *Ibid.* In any event, the court opined, the federal court likely "would not entertain an attack on the Decree * * * because of untimeliness." *Id.* at 46a.

4. In a motion for reconsideration, petitioner argued that it had sought to litigate its water rights in federal district court, but that those proceedings were stayed (under abstention grounds) by the rulings of this Court and the Ninth Circuit in *San Carlos*, *supra*, and *Adsit*, *supra*. In denying rehearing, the Arizona Supreme Court stated that the federal courts stayed only petitioner's independent federal-court action, not any post-judgment proceedings in the Globe Equity litigation, and thus did not deprive petitioner of the ability to seek relief from the Decree in the latter proceeding. Pet. App. 60a.

ARGUMENT

This Court's review is not warranted. The Arizona Supreme Court's comity holding is wrong, but that holding does not conflict with decisions of other appellate courts, and the issue is not likely to recur frequently. Moreover, even if the comity holding were reversed, petitioner could ultimately prevail on the inadequate-representation issue it seeks to raise in these proceed-

ings only by establishing a valid defense to the res judicata effect of the Globe Equity Decree, and petitioner would have to overcome significant obstacles to do so. With respect to the conditional cross-petition, the Arizona Supreme Court's interpretation of the Globe Equity Decree is correct and does not conflict with any other appellate decisions.

1. Although the Arizona Supreme Court's decision is interlocutory, this Court has jurisdiction to consider the petition under 28 U.S.C. 1257(a) because "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 480 (1975). The state supreme court conclusively determined that "the Globe Equity Decree precludes the Apache Tribe and the United States on the Tribe's behalf from asserting claims to water from the mainstem of the Gila River beyond those rights granted in the Decree," and that, on grounds of comity, it would not address the Tribe's argument that the Decree should not be given preclusive effect. Pet. App. 52a. Thus, while the state courts will undertake further proceedings concerning other claims to the relevant waters, the Arizona Supreme Court finally decided petitioner's claims to the mainstem.

Moreover, a general stream adjudication is a paradigmatic case for application of the *Cox Broadcasting* rule quoted above, because a state court can spend decades resolving thousands of different claims to water rights along a particular water body. This case has been pending for over two decades. See pp. 4-5, *supra*. It would make little sense for this Court to defer review of one claim or issue until all others are resolved, potentially several decades later. That course could prejudice

all parties to the adjudication if this Court ultimately upset decades of litigation by overturning an initial determination.

Jurisdiction over the conditional cross-petition is a closer question. While the Arizona Supreme Court finally determined that res judicata does not bar petitioner's claims to tributaries of the Gila River, see Pet. App. 52a, further litigation will be necessary to determine which, if any, of those claims are valid. Nonetheless, this Court has jurisdiction under 28 U.S.C. 1257(a) over the narrow category of cases where "the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds," and "a refusal immediately to review the state-court decision might seriously erode federal policy." *Cox*, 420 U.S. at 482-483.

If this Court were to grant the petition, and were to consider the conditional cross-petition worthy of its review, it would make little sense to resolve only one of the two res judicata issues at this time, and require the parties and the state courts to undertake lengthy litigation of the tributary claims before learning whether, in this Court's view, those claims are precluded by res judicata. Especially because this Court would already be reviewing this case at this time, and general stream adjudications can be exceptionally lengthy, "immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and of delayed justice,'" while also reducing the disruption to state proceedings—if the petition and conditional cross-petition otherwise warranted this Court's review. *Cox*, 420 U.S. at 477-478 (quoting *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 124 (1945)).

2. Under this Court's demanding certiorari criteria, however, the petition and cross-petition do not warrant further review. Petitioner does not challenge the Arizona Supreme Court's ruling that the Globe Equity Decree adjudicated petitioner's rights to water from the Gila River mainstem. Rather, petitioner asks (Pet. 16-30) this Court to review the Arizona Supreme Court's decision not to consider its inadequate-representation defense to claim preclusion.

a. Petitioner correctly explains (Pet. 16-23) that the Arizona Supreme Court erred in declining to consider petitioner's defense based on principles of comity. In other contexts, a state court's decision to defer to a federal court on the effect of the federal court's prior judgment might be appropriate, or at least not contrary to *federal* law.

In this unusual context, however, this Court directed the federal courts to abstain from adjudicating water rights covered by the State's general stream adjudication. See *Arizona* v. *San Carlos Apache Tribe*, 463 U.S. 545, 565-570 & n. 21 (1983). This Court explained that "concurrent federal proceedings are likely to be duplicative and wasteful, generating 'additional litigation through permitting inconsistent dispositions of property.'" *Id.* at 567 (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 819 (1976)). In doing so, the Court emphasized that the Arizona courts had a "solemn obligation to follow federal law" in adjudicating petitioner's water rights. *Id.* at 571. As part of that adjudication, the Arizona courts could properly resolve the question whether petitioner has a valid federal-law ground for overcoming the res judicata defense raised by other parties in this general stream adjudication. It makes little sense for the state

courts to decline to consider an issue of federal law out of comity to the federal courts when the federal courts have already abstained in deference to the state courts—especially when this Court has so directed and emphasized the state courts' obligation to follow federal law.

Although the Arizona Supreme Court suggested that Federal Rule of Civil Procedure 60(b) might prevent it from reaching the inadequate-representation question, the court correctly declined to rely on that ground. Pet. App. 41a-42a. Rule 60 provides a mechanism for a party to seek relief from a federal-court judgment by motion in the original proceeding, but "does not limit the power of a court to entertain an independent action to relieve a party from a judgment." Fed. R. Civ. P. 60(b). Here, petitioner seeks to assert water rights in this "independent action" by asserting affirmative claims to water, and it is asserting an inadequate-representation ground for overcoming the res judicata defense advanced by other parties.

The Arizona Supreme Court noted that the federal court that issued the Globe Equity Decree retained jurisdiction over the Decree, and petitioner intervened in that action in 1990 for purposes other than challenging the adequacy of the United States' representation. Pet. App. 44a. By that time, however, this Court had already held, in 1983, that the federal courts should abstain from adjudicating the water rights at issue in this Arizona general stream adjudication, *San Carlos*, 463 U.S. at 569-570, and the Ninth Circuit had therefore stayed petitioner's independent federal-court action, *Northern Cheyenne Tribe* v. *Adsit*, 721 F.2d 1187, 1189 (1983). While petitioner was free to defend its *existing* rights under the Globe Equity Decree in the court that entered

the Decree, this Court's *San Carlos* decision permitted petitioner to claim *additional* rights only in this state-court litigation. The Arizona Supreme Court therefore erred in holding that petitioner had voluntarily "declined to adjudicate its 'inadequate representation' claim" in the Globe Equity court. Pet. App. 44a.

The cases cited by the Arizona Supreme Court are not to the contrary. See Pet. App. 42a-43a. All of those cases conditioned their comity holdings on the availability of relief in an alternative forum. See *Feller* v. *Brock*, 802 F.2d 722, 728 (4th Cir. 1986); *Treadaway* v. *Academy of Motion Picture Arts & Scis.*, 783 F.2d 1418, 1421 (9th Cir. 1986); *Lapin* v. *Shulton, Inc.*, 333 F.2d 169, 172 (9th Cir.), cert. denied, 379 U.S. 904 (1964). Here, in contrast, relief is not available to petitioner in federal court under this Court's *San Carlos* decision.

b. Nonetheless, this case does not warrant this Court's review. The Arizona Supreme Court's decision does not directly conflict with this Court's decision in *San Carlos* because the latter decision did not address the question whether petitioner could request the federal court in the Globe Equity proceedings to determine the effect of its own prior decree for purposes of deciding whether petitioner then would be free under federal law to seek additional water from the mainstem of the Gila River in the state proceedings. Indeed, the *San Carlos* Court had no occasion to determine the significance of petitioner's *subsequent* limited intervention in the Globe Equity proceedings seven years after this Court decided *San Carlos*. Nor does petitioner contend that the decision below is in conflict with any other decision of this Court or another appellate court.

The precedential significance of the Arizona Supreme Court's decision is also limited. The issue ulti-

mately turns on this Court's decision that the federal courts should defer to Arizona's general stream adjudication—a "virtually unique" context, as this Court noted in *San Carlos*. 463 U.S. at 571.

c. The Arizona Supreme Court's comity holding may lack practical significance even in this case. Absent comity, petitioner's inadequate representation defense would face substantial obstacles on its merits. At the outset, the Arizona Supreme Court questioned the timeliness of any attempt to assert inadequate representation concerning the Globe Equity Decree many years after its entry in 1935. Pet. App. 45a-47a.

The Arizona Supreme Court also observed that this Court, in analogous cases, has twice rejected res judicata arguments similar to the argument made by petitioner in this case. Pet. App. 39a-40a (citing *Nevada* v. *United States*, 463 U.S. 110, 135 (1983); *Arizona* v. *California*, 460 U.S. 605, 626, 628 n.21 (1983) (*Arizona II*)). In *Nevada*, a Tribe sought to raise water rights claims that the United States had not sought on the Tribe's behalf when negotiating a consent decree on behalf of the Tribe and others. See 463 U.S. at 140. In holding that res judicata barred such claims, this Court emphasized that "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts . . . these wards should themselves be permitted to relitigate the question." *Id.* at 135 (quoting *Heckman* v. *United States*, 224 U.S. 413 (1912)).

While petitioner argues (Pet. 23 n.32) that an inadequate-representation theory was not raised in *Nevada*, this Court rejected a closely related argument that the United States had labored under a conflict of interest that in turn had led it to claim less water for the Tribe

than it should have in its capacity as a fiduciary. *Nevada*, 463 U.S. at 127-128, 135-136 n.15. Moreover, petitioner relies (Pet. 23 & n.31) on an exception to res judicata that applies where "no justifiable reliance interest" was created on the part of an opposing party because a fiduciary colluded with the opposing party or the fiduciary's representation was "so grossly deficient as to be apparent to the opposing party." Restatement § 42 cmt. f. There is a serious question whether that theory could ever apply where, as here, the United States as sovereign settled a claim for Indian water rights. Even in circumstances where reliance on a *private party's* inadequate representation would be unjustifiable, reliance on the *United States'* sovereign actions presents a different question. Cf. *Nevada*, 463 U.S. at 128, 135, 136 n.15.

As a factual matter, moreover, the United States does not believe that its representation was inadequate in the Globe Equity proceedings in light of, *inter alia*, the Decree's limitation to the Gila River mainstem, the limited amount of land on the San Carlos Apache Reservation that could be readily irrigated from the mainstem, and petitioner's limited historical use of the mainstem for irrigation. See, *e.g.*, OSM No. 17817, at 44-45 (1915 report noting limited amount of Apache land in irrigation along mainstem and that such fields would be inundated by San Carlos reservior); OSM No. 200362, at 18-19 (noting that the Gila River within Apache territory was "unsuitable for traditional Apache agriculture along most of [its] course" due to topography, vegetation, and flooding, and that the Apaches "located most of their farms along permanent streams that fed into the * * * Gila * * * River[]"). Those facts would have been known to the opposing parties at the time the Decree was entered. On this basis as well, there is substantial

reason to question whether petitioner could prevail even if this Court were to reverse the Arizona court's comity holding.

3. Even if this Court were to grant the principal petition, there would be no reason to grant the conditional cross-petition, which raises (Cross-Pet. i) the factbound question whether the Arizona Supreme Court erred by interpreting the Globe Equity Decree to resolve only claims to the Gila River itself, as opposed to that river's tributaries. Cross-petitioner argues (*id.* at 17) that "[t]he Arizona Supreme Court misapplied the federal law of claim preclusion." Under this Court's Rules, however, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. There is no reason for a different result in this case, especially because the Arizona Supreme Court's decision is correct and does not conflict with any other appellate decisions.

a. Cross-petitioner argues (Cross-Pet. 21) that federal law requires "an express and clear" reservation in a consent decree for parties to "split" or reserve a claim. The Restatement states, however, that preclusion does not apply when "[t]he parties have agreed in terms *or in effect* that [a] plaintiff may split [a] claim." Restatement § 26(1)(a) (emphasis added). Thus, while an express and clear reservation of rights in a consent decree is *sufficient* to avoid res judicata, it is not invariably *necessary*. See Pet. App. 17a-18a; *Dodd* v. *Hood River County*, 59 F.3d 852, 862 (9th Cir. 1995) (holding that "consent or tacit agreement" can provide "justification for splitting a claim").

The cases cited by cross-petitioner (Cross-Pet. 22-24) do not undermine that conclusion. Some of those cases

expressly recognize that a reservation need not be express. See *Simmons* v. *New Pub. Sch. Dist. No. 8*, 251 F.3d 1210, 1214 (8th Cir. 2001) (quoting Restatement § 26(1)(a)); *Young-Henderson* v. *Spartanburg Area Mental Health Ctr.*, 945 F.2d 770, 774 (4th Cir. 1991). Others rely, for example, on an agreement's "absolute[] silen[ce]." *May* v. *Parker-Abbott Transfer & Storage, Inc.*, 899 F.2d 1007, 1010 (10th Cir. 1990); see *International Union* v. *Karr*, 994 F.2d 1426, 1432 (9th Cir. 1993).

Here, in contrast, the Arizona Supreme Court explained that the Globe Equity Decree grants rights only as to the Gila River, not the tributaries; the United States' amended complaint dropped the claims in its original complaint concerning the tributaries; and the Decree acknowledges the United States' dismissal *without prejudice* of all defendants who had claimed water solely from the tributaries, making it quite clear that such claims were not resolved in the Globe Equity case. Pet. App. 19a-23a. Thus, even if a reservation had to be made in the decree, the Arizona Supreme Court properly rested its decision on the terms of the Decree, as informed by the litigation that preceded it. See *ibid.* Cross-petitioner cites no analogous cases.[3]

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[3] Even if the parties had not intended to reserve the tributary claims, res judicata would apply only if the mainstem and tributary claims formed part of the same cause of action or transaction. See Pet. App. 12a-14a. Although the Arizona Supreme Court did not fully resolve that question, it recognized that "claims to the Gila River mainstem asserted by the United States in the Globe Equity litigation would not seem to be part of the same 'transaction' as its claim to the tributaries," in part because the mainstem and tributaries are "spatially distinct." *Id.* at 15a.

b. Cross-petitioner errs in asserting (Cross-Pet. 2, 18-19) that the Arizona Supreme Court's decision is in conflict with this Court's decisions in *Nevada* and *Arizona II*. In both cases, this Court held that the United States could not assert claims for the benefit of Indian reservations because decrees in prior proceedings purported—unlike the decree at issue here—to resolve all such claims.

The *Nevada* Court explained that "the only conclusion allowed by the record * * * is that the Government was given an opportunity to litigate the Reservation's entire water rights to the [river], *and that the Government intended to take advantage of that opportunity*." 463 U.S. at 131 (emphasis added); see *id.* at 131-134 (surveying the record). In *Arizona II*, an original case before this Court, the special master likewise determined that "[t]he claim in the [earlier] case . . . embraced the totality of water rights for the Reservation lands." 460 U.S. at 615 (citation omitted). Here, in contrast, the Arizona Supreme Court found, based on its careful consideration of the record, that the parties did *not* intend to resolve tributary claims in the Globe Equity proceedings. Pet. App. 19a-25a. That fact-bound decision is fully consistent with this Court's fact-bound decisions in *Nevada* and *Arizona II*.

c. The Arizona courts' analysis of the record, on which both the trial court and the state supreme court agreed, does not warrant this Court's review. See *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949). In any event, that analysis is correct.

While conceding (Cross-Pet. 7) that "the United States limited the geographic scope of the *Globe Equity* litigation," cross-petitioner argues (*id.* at 8) that the amended complaint brought "the tributaries within the

litigation's geographic scope." In defining the relevant river segment, the amended complaint refers to a segment of "the Gila River * * * after the following tributaries of the Gila River, the San Francisco River, and the San Carlos River, the San Pedro River, and the Santa Crus River, respectively, have joined, the main stream." Cross-Pet. App. 74. That language merely defines the portion of the mainstem at issue, without in any way demonstrating an intent to include tributary claims (or rights to divert from tributaries) in the adjudication. See Pet. App. 20a.

While cross-petitioner observes (Cross-Pet. 7) that the amended complaint "named additional parties," including cross-petitioner, "who diverted water only off the tributaries," those parties were dismissed from the adjudication, without prejudice, because their claims were "outside the territorial scope" of the suit and had been included "through inadvertence and mistake"—a point cross-petitioner ultimately acknowledges. *Id.* at 10. Such dismissals were expressly recognized in the Decree. Pet. Supp. App. 120-121.

Although the amended complaint's prayer for relief contained a request that the Court "determine the rights of the parties hereto to the waters of [the Gila River] and its tributaries" (Cross-Pet. App. 75), the Arizona Supreme Court correctly explained that this request must be read in conjunction with the amended complaint's request for a determination of the rights of the parties "to *divert* water from said river within the area aforesaid," *i.e.*, the defined segment of the Gila River mainstem, *ibid.* (emphasis added); see Pet. App. 20a-21a. While some water in the relevant portion of the Gila River came from tributaries, the amended com-

plaint sought adjudication only of rights to water in the river, not in the tributaries. See *id.* at 19a-21a.

Cross-petitioner also argues (Cross-Pet. 24) that the United States "had no reason to exclude the San Carlos River" from its claims if tributary claims were not otherwise included in the claims of the amended complaint. That ignores the fact that the United States expressly claimed appropriations from the San Carlos River on behalf of petitioner in its original complaint. Cross-Pet. App. 10. The exclusion of the San Carlos River in the amended complaint served only to narrow an express request in the original complaint, not to indicate the breadth of the amended complaint with respect to other tributary claims.

CONCLUSION

The petition and conditional cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

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No. 06-173

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

BRIEF IN OPPOSITION OF RESPONDENT ASARCO LLC

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QUESTION PRESENTED

Whether the Arizona Supreme Court erred in declining to consider the San Carlos Apache Tribe's state court challenge to the binding nature of a consent decree entered by the United States District Court for the District of Arizona, when the Tribe failed to argue before that District Court that the decree does not bind it.

CORPORATE DISCLOSURE STATEMENT

ASARCO LLC, a Delaware limited liability company, is wholly owned by Asarco Incorporated, a Delaware corporation. Asarco Incorporated is wholly owned by Americas Mining Corporation, a Delaware corporation. Americas Mining Corporation is wholly owned by Grupo Mexico, S.A. de C.V. Grupo Mexico, S.A. de C.V. is traded on the Mexican Stock Exchange. No stock of the other entities mentioned is publicly traded.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
STATEMENT OF THE CASE	1
A. The Globe Equity Court Already Ruled That The Decree Precludes The San Carlos Apache Tribe From Claiming An Additional Right To The Mainstem Of The Gila River	2
B. The District Court, In A Separate Action Initiated By The Tribe, Refused To Compel Operation Of The San Carlos Reservoir In A Manner Different From That Required By The Decree	3
C. The Tribe Seeks Relief That Is Contrary To The Injunction Contained In The Decree	5
D. The Globe Equity Court Ruled In 1983 That The Gila River Indian Community's Attempt To Overturn The Decree Was Untimely. The Tribe Shunned Its Opportunity To Seek Similar Relief And, If Necessary, Contest Such A Ruling In Its Own Circumstances	6
E. Contested Case W1-206 Focused On Both Indian And Non-Indian Claims	7
F. The Tribe's Description Of Its Water Supply Situation Is Misleading	8
G. The Tribe's Description Of Pending Federal Actions Involving Its Water Right Claims Is Inaccurate	10

TABLE OF CONTENTS – Continued

Page

H. The Tribe's Assertion That Some Of Its Claims To The Mainstem Of The Gila River Have Not Been Quantified Assumes The Opposite Of The Arizona Supreme Court's Conclusion 10

REASONS FOR DENYING THE PETITION 11

A. The Arizona Supreme Court's Decision Is Consistent With This Court's Precedent And With The Case Law Of The Federal Courts Of Appeals 11

1. The Arizona Supreme Court Is Required to Respect the Globe Equity Decree Unless That Decree Is Reversed or Modified by the Globe Equity Court or a Federal Appellate Court 11

2. Prior Tribal Challenges to Decrees Based On Alleged Inadequate Representation, Cited in the Petition, Were Presented in the First Instance to the Court That Entered the Contested Decree 15

3. The McCarran Amendment Did Not Diminish The Globe Equity Court's Jurisdiction To Entertain a Challenge to the Decree, and the Doctrine of Prior Exclusive Jurisdiction at a Minimum Supports the Arizona Supreme Court's Decision Not To Entertain the Tribe's Collateral Attack on the Decree 16

4. The "Comprehensiveness" Standard of the McCarran Amendment Does Not Require That Previously Decreed Rights Be Relitigated 18

TABLE OF CONTENTS – Continued

Page

B. The Petition Does Not Present an Appropriate Defense to Privity Even If the Allegations Were True 18

C. The Petition Presents No Issues Warranting This Court's Attention 20

CONCLUSION 23

TABLE OF AUTHORITIES

Page

CASES

Angel v. Bullington, 330 U.S. 183 (1947) 12

Arizona v. California, 373 U.S. 546 (1963) 15

Arizona v. California, 376 U.S. 340 (1964) 15

Arizona v. California, 460 U.S. 605 (1983) 15

Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983) 9, 16

Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927) 12

Celotex Corp. v. Edwards, 514 U.S. 300 (1995) 11

Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371 (1940) 12

Claflin v. Houseman, 93 U.S. 130 (1876) 14

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) 16

Commissioner v. Sunnen, 333 U.S. 591 (1948) 12

Cromwell v. County of Sac, 94 U.S. 351 (1877) 12

Deposit Bank v. Frankfort, 191 U.S. 499 (1903) 12

Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394 (1981) 12

H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115 (6th Cir. 1976) 13

Heckman v. United States, 224 U.S. 413 (1912) 22

In re General Adjudication of All Rights to Use Water in Gila River System & Source, 212 Ariz. 64, 127 P.3d 882 (2006), *reconsideration denied*, 212 Ariz. 470, 134 P.3d 375 (2006) ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

Nevada v. United States, 463 U.S. 110 (1983).....15, 22

Orion Tire Corp. v. Goodyear Tire & Rubber Co., 268 F.3d 1133 (9th Cir. 2001)..... 13

Paul Revere Variable Annuity Ins. Co. v. Zang, 248 F.3d 1 (1st Cir. 2001)..... 14

Plotner v. AT&T Corp., 224 F.3d 1161 (10th Cir. 2000)..... 13

Reed v. Allen, 286 U.S. 191 (1932)..... 12

Rivet v. Regions Bank, 522 U.S. 470 (1998) 11

San Carlos Apache Tribe v. Arizona, CIV 79-186 PHX-PGR 10

San Carlos Apache Tribe v. United States, 272 F. Supp. 2d 860 (D. Ariz. 2003), *aff'd in part*, 417 F.3d 1091 (9th Cir. 2005), and *aff'd in part*, 144 Fed. Appx. 635 (9th Cir. 2005) 3, 4, 13

State Eng'r v. South Fork Band, 339 F.3d 804 (9th Cir. 2003).....16, 17

Stephenson v. Dow Chemical Co., 273 F.3d 249 (2d Cir. 2001), *aff'd in part and vacated in part*, 539 U.S. 111 (2003) (*per curiam*) 18, 19

United States v. Alpine Land & Reservoir Co., 174 F.3d 1007 (9th Cir. 1999)..... 17

United States v. District Court in and for Eagle County, 401 U.S. 520 (1971) 18

United States v. Gila Valley Irrig. Dist., 804 F. Supp. 1 (D. Ariz. 1992), *aff'd in part and rev'd in part on other grounds*, 31 F.3d 1428 (9th Cir. 1994)..... 2-3, 5, 20

TABLE OF AUTHORITIES – Continued

Page

United States v. Gila Valley Irrig. Dist., 920 F. Supp. 1444 (D. Ariz. 1996), *aff'd*, 117 F.3d 425 (9th Cir. 1997) 8

United States v. Oregon, 44 F.3d 758 (9th Cir. 1994), *cert. denied*, 516 U.S. 943 (1995) 18

United States v. Orr Water Ditch Co., 391 F.3d 1077 (9th Cir. 2004), *as amended on denial of reh'g*, 400 F.3d 1117 (9th Cir. 2005) 9, 22

Watts v. Pinckney, 752 F.2d 406 (9th Cir. 1985) 13

Wilson's Executor v. Deen, 121 U.S. 525 (1887) 12

Winters v. United States, 207 U.S. 564 (1908) 21

STATUTES

43 U.S.C.A. § 666 (McCarran Amendment) 16

RULES

Rule 60(b), Federal Rules of Civil Procedure 13, 14

OTHER AUTHORITIES

Restatement (Second) of Judgments § 41(1)(d) (1982).....22

Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, Titles II & III, 118 Stat. 3478, 3499, 3536.....9

Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, Title IV, 104 Stat. 4469, 4480.....9

Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549 9

TABLE OF AUTHORITIES – Continued

Page

San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, §§ 3701 *et seq.*, 106 Stat. 4600, 4740 .....9, 10

STATEMENT OF THE CASE

ASARCO LLC ("ASARCO") incorporates by reference the statement of facts in part I of the primary opinion below. *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. 64, --, 127 P.3d 882, 885-87 (2006), *reconsideration denied*, 212 Ariz. 470, 134 P.3d 375 (2006); Petitioner's App. A at 2a-8a. Much of the discussion and many of the contentions contained in the Petition are incorrect and irrelevant to the issues it poses. ASARCO responds below to the Petition's misstatements that may be material to the questions presented.

It is important to understand at the outset, however, what the Arizona Supreme Court did and did not do, to the extent relevant to the issues raised in the Petition. The Court ruled that as a matter of comity it would not entertain an attack by the San Carlos Apache Tribe (the "Tribe") on the federal court's Globe Equity Decree (the "Decree") founded on the alleged absence of privity between the Tribe and its Trustee. *See id.* at --, 127 P.3d at 901; Petitioner's App. A at 46a-47a. The decision below is supported, indeed dictated, by precedent of this Court and lower federal courts. The fact that the Tribe lacks another avenue for relief is solely the result of its own conscious, express decision in 1990 not to invoke the originating District Court's jurisdiction in mounting such a challenge to the Decree. *See id.* at --, 127 P.3d at 900; Petitioner's App. A at 44a; *infra* at 14, 20. The Arizona Supreme Court was manifestly correct in refusing to effectuate the Tribe's ploy to litigate its privity defense in a venue other than the District Court that entered the Decree.

ASARCO's corrections of significant misstatements found in the Petition follow.

A. The Globe Equity Court Already Ruled That The Decree Precludes The San Carlos Apache Tribe From Claiming An Additional Right To The Mainstem Of The Gila River.

The Tribe represents that "the *Globe Equity* court has never ruled as to the preclusive effect of the *Globe Equity Decree* as to the Apache Tribe or as to GRIC." Petition at 11 n.19. This is incorrect. Shortly after intervening in the Globe Equity litigation, the Tribe attempted unsuccessfully to expand its rights under the Decree by securing an entitlement to continuous flow in the Gila River. In *United States v. Gila Valley Irrig. Dist.*, 804 F. Supp. 1, 10 (D. Ariz. 1992), *aff'd in part and rev'd in part on other grounds*, 31 F.3d 1428 (9th Cir. 1994), the District Court held:

> To the extent that the Tribe argues that a live stream condition is mandated under the doctrine of beneficial use, the Court must disagree. While Article XI limits diversions from the river to those which are of beneficial use, Article XII [sic; should be Article XIII] specifically enjoins parties with decreed water rights from "asserting or claiming . . . any right, title, or interest in or to the waters of the Gila River. . . . " The Court agrees with UVDs that the Decree was intended as a complete statement of the rights of the various parties to the waters of the Gila River. The Court agrees with the Tribe that the drafters lacked both foresight and concerns for the interests of the Apaches living on and near the river. However, the Court is

> constrained by the Decree to conclude that, for purposes of uses not specified in the Decree, the Tribe can assert no right to a live stream condition.

This is an unmistakable ruling that the Decree precludes the Tribe from claiming water rights in the mainstem of the Gila River not recognized in the Decree.

B. The District Court, In A Separate Action Initiated By The Tribe, Refused To Compel Operation Of The San Carlos Reservoir In A Manner Different From That Required By The Decree.

The decision in *San Carlos Apache Tribe v. United States*, 272 F. Supp. 2d 860, 867 (D. Ariz. 2003), *aff'd in part*, 417 F.3d 1091 (9th Cir. 2005), *and aff'd in part*, 144 Fed. Appx. 635 (9th Cir. 2005) (unpublished), also bears on the Tribe's prior efforts to escape the effect of the Decree. The Tribe filed an independent action in the District Court for the District of Arizona challenging drawdowns of the San Carlos Reservoir pursuant to the Decree. It effectively sought a right to retain water in the San Carlos Reservoir for its own purposes. The District Court described the claim as follows:

> [T]he Plaintiffs allege that there has been a material change in circumstances that justifies modification of the comprehensive management provisions for operating the Reservoir that are set out in the Gila River Decree [also known as the Globe Equity Decree]. . . .

Id. The District Court denied all relief. 272 F. Supp. 2d at 868. In doing so it made several observations that undercut the Petition:

> The challenged drawdowns merely reflect the rights and obligations of the respective parties to the waters in the Reservoir, as established by the San Carlos Project Act, the Globe Equity Agreement, and the San Carlos Apache Tribe Water Rights Settlement Act of 1992. Consequently, Plaintiffs' nuisance claim is not reviewable under the APA and must be dismissed.

Id. at 884 (footnote omitted); *see also id.* at 896.

> Under *Nevada*, SCIIPs [sic] operation in compliance with the San Carlos Project Act of 1924 Act [sic] and the Globe Equity Decree of 1935 cannot be a breach of the Government's general trust responsibilities to the Plaintiffs.

Id. at 894.

> "Any claim that accrued before August 13, 1946, and which was not filed with the Commission by August 13, 1951, could not 'thereafter be submitted to any court or administrative agency for consideration,' nor could such a claim 'thereafter be entertained by the Congress.'" [Citation omitted.] Consequently, there is no jurisdiction for this Court to consider the breach of trust challenge to the propriety of SCIIP's operations and management in compliance with the San Carlos Act of 1924 and Globe Equity Decree of 1935.

Id. at 895.

C. The Tribe Seeks Relief That Is Contrary To The Injunction Contained In The Decree.

The Tribe assures this Court that it has not sought to upset or invalidate the Decree in the proceeding below. Petition at 9 n.15. It does contend, however, that it should be allowed both to retain the right to use 6,000 acre feet per annum of mainstem Gila River water on its reservation, a right recognized in the Decree (*see* Art. VI(2), Petitioner's Supp. App. at 198), and to press additional claims from that source. ASARCO App. 29-30; ASARCO App. 38-41. In contrast to the Tribe's position, Article XIII of the Decree enjoined those to whom rights were decreed, their agents and successors, "from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any part thereof, except the rights specified, determined and allowed by this decree. . . ." Petitioner's Supp. App. at 225. *See also United States v. Gila Valley Irrig. Dist.*, *supra* at 2-3. Even while maintaining that the Decree should not preclude it from claiming additional water from the Gila River mainstem, the Tribe argued below that the Decree should be accorded res judicata effect as to certain claims of the Gila River Indian Community. ASARCO App. 31-32. The Tribe's insistence that the Decree's preclusive effect is neither mutual nor coextensive among the Decree parties is inconsistent with its assurance that the Decree's validity is not under assault.

D. The Globe Equity Court Ruled In 1983 That The Gila River Indian Community's Attempt To Overturn The Decree Was Untimely. The Tribe Shunned Its Opportunity To Seek Similar Relief And, If Necessary, Contest Such A Ruling In Its Own Circumstances.

The Tribe complains that the Arizona Supreme Court speculated on the outcome of an attack on the Decree in the District Court for the District of Arizona had the Tribe chosen to pursue one. Petition at 11 n.19. It also implies that the Arizona Supreme Court's expectation about that outcome was unfounded, reasoning that the District Court's 1983 refusal to allow the Gila River Indian Community to attempt to set aside the Decree resulted from the Pima Indian Tribal Council's failure to appeal the denial of its pre-Decree petition for leave to intervene. *Id.* The District Court's 1983 order, however, leaves no doubt that it considered the Indian Community's effort to overturn the Decree untimely, and as an aside, observed that even if it were to consider the Indian Community's effort, the Pima Indian Tribal Council's failure to appeal would preclude the Court from considering pre-Decree events. Petitioner's App. F at 214a-215a, 217a-218a. More important for purposes of evaluating the Petition, the Arizona Supreme Court followed its prediction of the outcome of such a challenge to the Decree by the Tribe with this observation:

> Had the Tribe believed that the district court erred in refusing to allow GRIC to intervene to attack the Decree, it could have sought to attack the Decree in its 1990 motion to intervene and then sought federal appellate review from any denial thereof. Had it done so, the federal courts could have conclusively addressed the issue. If

> we were today to consider the Tribe's privity arguments, we would be in effect rewarding its strategic choice to withhold making those arguments in the court that issued the Decree in order to seek a more favorable forum here.

212 Ariz. at --, 127 P.3d at 901; Petitioner's App. A at 46a.

E. Contested Case W1-206 Focused On Both Indian And Non-Indian Claims.

The scope of the state court's contested case W1-206, which gave rise to the decision challenged in the Petition, requires clarification in light of the Petition. That contested case addressed the preclusive effect of the Decree not only on the Tribe, but also on the Franklin Irrigation District and the Gila Valley Irrigation District. ASARCO App. 19. The Decree confirmed water rights for lands within these districts, with points of diversion upstream of the Tribe's reservation. Petitioner's Supp. App. at 1. The motions for summary judgment on which the Superior Court ruled related to these irrigation districts as well as the Tribe. *E.g.*, ASARCO App. 20-21. The Arizona Supreme Court had no occasion to discuss the preclusive effect of the Decree on the irrigation districts or their members because they did not appeal the Superior Court ruling. Contested case W1-206 did not single out the Tribe's water right claims for unusual scrutiny or leave non-Indian interests unaffected in its wake, as the Tribe implies. *See, e.g.*, Petition at 6, 15, 26, 27 n.34, 29-30.

F. The Tribe's Description Of Its Water Supply Situation Is Misleading.

The Tribe asserts that the Arizona Supreme Court's application of res judicata to bar further claims to the mainstem of the Gila River leaves residents of the Tribe's reservation without water for human or livestock consumption, gardens, economic development, and other purposes that may be associated with a "permanent tribal homeland." *E.g.*, Petition at 4, 15, 22, 26. This creates an inaccurate impression in several respects. First, the Arizona Supreme Court held that the Decree does not preclude the Tribe from claiming water from the tributaries to the Gila River. 212 Ariz. at --, 127 P.3d at 894; Petitioner's App. A at 26a. Therefore, the Tribe remains free to litigate its claimed right to water from the tributaries for such purposes in the Gila River Adjudication.

Second, the argument that the Tribe lacks water for purposes other than irrigation incorrectly implies that it has no opportunity to convert all or a portion of its decreed irrigation right to a right for other purposes. The Decree itself allows any party "to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other parties as the same are defined herein." Decree, Art. XI; Petitioner's Supp. App. at 224. The District Court established a rule implementing this provision. ASARCO App. 4-13. *See also United States v. Gila Valley Irrig. Dist.*, 920 F. Supp. 1444, 1478 (D. Ariz. 1996), *aff'd*, 117 F.3d 425 (9th Cir. 1997). The Tribe has not demonstrated to this Court or the Courts below that it ever requested such relief from the District Court, nor has it requested approval of a change in use from the Arizona Department

of Water Resources. *See, e.g., United States v. Orr Water Ditch Co.*, 391 F.3d 1077, 1081 (9th Cir. 2004), *as amended on denial of reh'g*, 400 F.3d 1117 (9th Cir. 2005).

Third, the Gila River is not the only water source available to satisfy the water needs of the Tribe's reservation. Pursuant to the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, §§ 3701 et seq., 106 Stat. 4600, 4740, as amended, the Gila River Adjudication court confirmed the settlement of the Tribe's water right claims to the Salt and Black Rivers, which border northern portions of its reservation, and its claim to the San Pedro River. The settlement awarded the Tribe 71,445 acre feet of surface water per annum for use on its reservation. *See* ASARCO App. 16-18. Congress also authorized appropriation of $38,400,000 for the Tribe in accordance with the settlement, "to put to beneficial use the Tribe's water entitlement, to defray the cost to the Tribe of CAP [Central Arizona Project] operation, maintenance and replacement charges as appropriate, and for other economic and community development purposes." Pub. L. No. 102-575, § 3707(c) & (d), 106 Stat. 4748.[1]

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[1] The Tribe's criticism of the Gila River Adjudication ignores not only the 1992 settlement of some of its own claims, but also the significant benefits other Arizona Indian tribes in the Gila River Basin have reaped from water right settlements achieved since this Court's decision in *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983). *See* Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549; Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, Title IV, 104 Stat. 4469, 4480; Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, Titles II & III, 118 Stat. 3478, 3499, 3536. It also fails to acknowledge, other than in two terse references, the tribes' successes in the Gila River Adjudication. *See* Petition at 27 n.35, 29.

(Continued on following page)

G. The Tribe's Description Of Pending Federal Actions Involving Its Water Right Claims Is Inaccurate.

The Petition incorrectly states that the Tribe's claims in the action captioned *San Carlos Apache Tribe v. Arizona*, CIV 79-186 PHX-PGR, remain pending in the District Court for the District of Arizona. *See* Petition at 5. Only the Tribe's claims to the Gila River are pending; its claims to the Black River and to the Salt River below its confluence with the Black River were dismissed pursuant to the settlement authorized by the San Carlos Apache Tribe Water Rights Settlement Act of 1992, *supra*. ASARCO App. 15.

H. The Tribe's Assertion That Some Of Its Claims To The Mainstem Of The Gila River Have Not Been Quantified Assumes The Opposite Of The Arizona Supreme Court's Conclusion.

The Tribe asserts that its alleged water rights to the mainstem of the Gila River arising under the "Law of Nations, as well as under Spanish, Mexican, and American law" have not yet been quantified. Petition at 1 n.2. This, of course, is precisely the opposite of the Arizona Supreme Court's holding below. 212 Ariz. at --, 127 P.3d at 894-95, Petitioner's App. A at 26a-31a. Apart from the Tribe's argument about the alleged inadequacy of the United States' representation of the Tribe's interests in negotiating the Decree, however, the Tribe's statement of issues does not actually dispute the Arizona Supreme

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The cited decisions dispel any notion that the Arizona Supreme Court might be hostile to tribal positions.

Court's resolution of this issue. The Tribe's contention also ignores the f[illegible] that the Decree extinguished any such claims by ope[illegible]on of res judicata. *See Rivet v. Regions Bank*, 522 U.S. 470, 476-77 (1998).

REASONS FOR DENYING THE PETITION

The Petition presents no issues or circumstances worthy of this Court's attention. On the contrary, the Arizona Supreme Court's decision addresses what the Tribe has conceded is a unique factual circumstance involving distinct legal questions, and did so in a manner consistent with this Court's precedent and the case law of the Federal Courts of Appeals.

A. The Arizona Supreme Court's Decision Is Consistent With This Court's Precedent And With The Case Law Of The Federal Courts Of Appeals.

1. The Arizona Supreme Court Is Required to Respect the Globe Equity Decree Unless that Decree Is Reversed or Modified by the Globe Equity Court or a Federal Appellate Court.

The Tribe's implied premise is that once it asserts the Decree does not bind it, the Arizona Supreme Court may not operate on the assumption that the Decree is valid as to the Tribe. This Court has observed, however, that "'[i]t is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected.'" *Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995).

This Court delivered the same message in *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981):

> A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948); *Cromwell v. County of Sac*, 94 U.S. 351, 352-353 (1877). Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. *Angel v. Bullington*, 330 U.S. 183, 187 (1947); *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940); *Wilson's Executor v. Deen*, 121 U.S. 525, 534 (1887). As this Court explained in *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 325 (1927), an "erroneous conclusion" reached by the court in the first suit does not deprive the defendants in the second action "of their right to rely upon the plea of *res judicata*. . . . A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action]." We have observed that "[t]he indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of *res judicata* to avert." *Reed v. Allen*, 286 U.S. 191, 201 (1932).

Accord Deposit Bank v. Frankfort, 191 U.S. 499, 512, 520-21 (1903).

Res judicata does not bar a *direct* attack on a federal district court judgment through an appeal to the appropriate Court of Appeals, *see Orion Tire Corp. v. Goodyear Tire & Rubber Co.*, 268 F.3d 1133, 1135-36 (9th Cir. 2001), or a *direct* attack in the district court that entered the judgment. *Plotner v. AT&T Corp.*, 224 F.3d 1161, 1170 (10th Cir. 2000); *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985). A direct attack on a judgment is "'an attempt to correct it, or to void it, in some manner provided by law to accomplish that object. It is an attack . . . by appropriate proceedings between the parties to it seeking, for sufficient cause alleged, to have it annulled, reversed, vacated or declared void.'" *Id.* (citation omitted). The Petition advances arguments that, if appropriate anywhere, should have been presented to the Court of Appeals for the Ninth Circuit, or more likely, to the Globe Equity Court.

Res judicata does bar a *collateral* attack on a judgment where its prerequisites are met. *Orion Tire Corp.*, *supra*, 268 F.3d at 1136; *Plotner*, *supra*, 224 F.3d at 1172. A collateral attack is one that attempts to defeat a defense asserting the preclusive effect of a judgment, such as res judicata, without overturning the judgment itself. *See id.* at 1170. The Petition presents an impermissible collateral attack on the Decree.

Courts of Appeals have ruled that only the district court entering the judgment has jurisdiction over an independent action under FRCP 60(b) to set aside a decree. *See Plotner*, 224 F.3d at 1172; *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1117, 1120 (6th Cir. 1976). To the extent the Tribe's unsuccessful effort to modify the Decree in *San Carlos Apache Tribe v. United States*, *supra* at 3, 4, represented an attempt at

relief under FRCP 60(b), it at least was filed in the correct District Court, although the Tribe failed to join most parties to the Decree and their successors in interest (including ASARCO) as parties.

The Tribe successfully moved to intervene as a plaintiff in the Globe Equity litigation in 1990. In doing so, however, it expressly disclaimed any intention to challenge the Decree. ASARCO App. 1-2; ASARCO App. 3. The Tribe's election to forsake the appropriate forum in which to assert its current challenge to the Decree in favor of the Gila River Adjudication was a conscious one, from which the Arizona Supreme Court had no obligation or ability to rescue it. The Arizona Supreme Court does not sit in review of the Globe Equity Court: "[T]he sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other, . . . and hence the State courts have no power to revise the action of the Federal courts. . . . " *Claflin v. Houseman*, 93 U.S. 130, 137 (1876). As observed in *Paul Revere Variable Annuity Ins. Co. v. Zang*, 248 F.3d 1, 6 (1st Cir. 2001): "The law presumes that parties will make choices to protect their legal interests, even though those choices may at times involve a calculated risk. Where a party makes a considered choice, though it may involve some calculated risk, he 'cannot be relieved of such a choice because hindsight seems to indicate to him' that, as it turns out, his decision was 'probably wrong.'" (Citation omitted.) The Arizona Supreme Court correctly concluded that the Tribe's strategy of intentionally forgoing recourse to the Globe Equity Court in favor of the state court forum is not one it should countenance. 212 Ariz. at --, 127 P.3d at 898-901; Petitioner's App. A at 40a-47a.

2. Prior Tribal Challenges to Decrees Based On Alleged Inadequate Representation, Cited in the Petition, Were Presented in the First Instance to the Court That Entered the Contested Decree.

The decisions of this Court on which the Tribe relies provide it no solace. The Tribe contends on one hand that this Court "acknowledged the defense of inadequate representation as viable under the law," citing *Arizona v. California*, 460 U.S. 605 (1983), *see* Petition at 24, and "did not consider or rule against the viability of the legal defense of inadequate representation" in *Nevada v. United States*, 463 U.S. 110 (1983). *See* Petition at 23 n.32. Regardless of whether the Tribe's characterization of those decisions is correct, in each case the allegation of inadequate representation was presented to the Court that originated the decree at issue. In *Arizona v. California*, *supra*, the tribes advanced the defense with respect to this Court's disposition in *Arizona v. California*, 373 U.S. 546 (1963) (opinion), and 376 U.S. 340 (1964) (decree). *See Arizona v. California*, 460 U.S. at 626-28. Similarly, the Pyramid Lake Paiute Tribe asserted its contention of inadequate representation in the first instance before the district court that entered the Orr Ditch Decree, in the course of litigation leading to *Nevada v. United States*. *See* 463 U.S. at 113. This is precisely the process required by the Arizona Supreme Court's decision challenged here.

3. The McCarran Amendment Did Not Diminish the Globe Equity Court's Jurisdiction to Entertain a Challenge to the Decree, and the Doctrine of Prior Exclusive Jurisdiction at a Minimum Supports the Arizona Supreme Court's Decision Not To Entertain the Tribe's Collateral Attack on the Decree.

The McCarran Amendment, 43 U.S.C.A. § 666, and this Court's interpretation of the Amendment, do not suggest, let alone require, a result different from that reached by the Arizona Supreme Court. The Amendment did not destroy or limit the jurisdiction of federal courts, but rather consented to concurrent jurisdiction in state courts over controversies involving federal rights to water. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 809 & n.15 (1976); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 559 n.10 (1983).

This Court, in *Colorado River*, cited its prior rulings stating that the court first assuming jurisdiction over property may exercise that jurisdiction to the exclusion of other courts. *See* 424 U.S. at 818. The Court of Appeals for the Ninth Circuit labels this the doctrine of prior exclusive jurisdiction, providing that "'when a court of competent jurisdiction has obtained possession, custody, or control of particular property, that possession may not be disturbed by any other court.'" *State Eng'r v. South Fork Band*, 339 F.3d 804, 809 (9th Cir. 2003) (citations omitted). In the Ninth Circuit's view, while the doctrine is based in part on considerations of comity, it is a mandatory jurisdictional limitation. *Id.* at 810.

The Ninth Circuit has applied the doctrine of prior exclusive jurisdiction at least twice in connection with water right decrees. *South Fork Band* involved the

Humboldt Decree, which was entered by a Nevada state court. The Court of Appeals held that the federal district court lacked jurisdiction over contempt proceedings initiated to compel the South Fork Band to comply with the decree, because the state court's jurisdiction first attached over what was a quasi in rem proceeding.

South Fork Band was foreshadowed by the ruling in *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007 (9th Cir. 1999). That dispute arose from applications to change the place of diversion or manner or place of use of water rights adjudicated under the Orr Ditch Decree and Alpine Decree, both entered by a federal district court in Nevada. The Court of Appeals affirmed an injunction prohibiting the Nevada state court from hearing an appeal of the State Engineer's decision to grant the applications. It reasoned that the "actions that resulted in the Orr Ditch and Alpine Decrees are sufficiently analogous to *in rem* actions to provide the district court with exclusive jurisdiction." *Id.* at 1013. The Court also observed that "[s]o long as the dispute in this case is related to the district court's earlier Decrees, the district court retains jurisdiction to adjudicate the dispute." *Id.* at 1012 n.5.

The McCarran Amendment left the Globe Equity Court's jurisdiction undisturbed, and the doctrine of prior exclusive jurisdiction at the very least cautioned the Arizona Supreme Court not to entertain a collateral attack on that Court's Decree. The Arizona Supreme Court's decision is consistent with this Court's and the Ninth Circuit's precedent.

4. The "Comprehensiveness" Standard of the McCarran Amendment Does Not Require That Previously Decreed Rights Be Relitigated.

This Court has ruled that a general stream adjudication does not fail the McCarran Amendment's "comprehensiveness" standard simply because it is a supplemental determination of rights acquired since completion of the last adjudication. *United States v. District Court in and for Eagle County*, 401 U.S. 520, 525-26 (1971); *see also United States v. Oregon*, 44 F.3d 758, 767-68 (9th Cir. 1994), *cert. denied*, 516 U.S. 943 (1995). Conflicts between earlier decreed rights and subsequently adjudicated federal reserved rights can be resolved if preserved. *United States v. District Court in and for Eagle County*, *supra*, 401 U.S. at 525-26. There is no conflict between the Decree's settlement of federal reserved right claims and the Gila River Adjudication, because the Arizona Supreme Court found the Decree binding on those holding rights under it to the extent of its proper scope. The Arizona Supreme Court's election not to permit the Tribe's collateral attack on the Decree in the Gila River Adjudication does not violate the McCarran Amendment's requirements.

B. The Petition Does Not Present An Appropriate Defense To Privity Even If The Allegations Were True.

The Tribe's insistence on retaining its decreed right while pursuing additional mainstem claims, *see supra* at 5, is fundamentally inconsistent with its theory of inadequate representation. The Court in *Stephenson v. Dow Chemical Co.*, 273 F.3d 249, 259 (2d Cir. 2001), *aff'd*

in part and vacated in part by an equally divided Court, 539 U.S. 111 (2003) (per curiam), considered a claim of inadequate representation in the class action settlement context. The plaintiffs were class members denied all recovery because their injuries did not manifest themselves until after the settlement fund had expired, despite the fact that the settlement purported to resolve all future claims. 273 F.3d at 260-61. The Court of Appeals agreed that the plaintiffs were not represented adequately: "Because these plaintiffs were inadequately represented in the prior litigation, they were not proper parties and cannot be bound by the settlement." *Id.* at 261; *see also id.* at n.8.

There is a significant difference, however, between the Tribe's position in this case and that of the plaintiffs in *Stephenson*. The Court in *Stephenson* explained:

> Plaintiffs do not attack the merits or finality of the settlement itself, but instead argue that they were not proper parties to that judgment. If plaintiffs were not proper parties to that judgment, as we conclude below, res judicata cannot defeat their claims. Further, such collateral review would not, as defendants maintain, violate defendants' due process rights by exposing them to double liability. Exposure to liability here is not duplicative if plaintiffs were never proper parties to the prior judgment in the first place.

Id. at 259. In contrast to the *Stephenson* plaintiffs, who received nothing under the prior settlement, the Tribe clings to its right under the Decree to 6,000 acre feet per annum, a right the United States negotiated successfully on the Tribe's behalf, while attempting to avoid the

injunction in Article XIII of the Decree. The Tribe cannot retain both a water right recognized in the Decree and its standing to demand the Decree's enforcement, while remaining free of the Decree's injunction. As the Globe Equity Court ruled, "the Decree was intended as a complete statement of the rights of the various parties to the waters of the Gila River." *United States v. Gila Valley Irrig. Dist.*, 804 F. Supp. at 10.

C. The Petition Presents No Issues Warranting This Court's Attention.

The Tribe would have this Court believe that the Tribe's inability to litigate its privity defense to res judicata in the Gila River Adjudication is a matter of grave constitutional moment that this Court should address. Petition at 23-24. It is not. The Arizona Supreme Court applied straightforward federal claim preclusion law to a fact pattern even the Tribe admits is unusual.

First, the Tribe voluntarily foreclosed the only avenue available to present such a defense, and it is now struggling to avoid the consequences. That situation is unlikely to be a common one.

Further, the ruling below will have little impact beyond the Gila River Watershed. The Tribe itself repeatedly emphasized before the Arizona Supreme Court the individuality of the Decree and of the Tribe's arguments and history relating to that Decree. It characterized the Decree as "a unique and unprecedented contract," ASARCO App. 35, and the United States' rights for the Tribe's reservation as having "unique characteristics." *Id.* at 35-36; *see also* ASARCO App. 27. It described the facts related to its reservation as

"fundamentally distinct" from those pertaining to the Gila River Indian Community's reservation, which lies downstream on the same river adjudicated by the Decree. ASARCO App. 22; *see also* ASARCO App. 25-26; ASARCO App. 33-34. It informed the Arizona Supreme Court that the Tribe's claims involve "unique facts." ASARCO App. 23. Similarly, it described the "unique legal and factual issues posited by the Apache Tribe's motion for summary judgment." *Id.* at 23-24; *see also* ASARCO App. 27-28; ASARCO App. 33. It ascribed a similar character to its petition for interlocutory review before the Arizona Supreme Court. ASARCO App. 27. The Tribe referred to itself as "culturally and legally distinct." ASARCO App. 25-26. It cited "the unique factual history involving these two very different Indian tribes," contrasting itself to the Gila River Indian Community. ASARCO App. 30; *see also id.* at 30-31; ASARCO App. 37.

Against this backdrop, this Court's review cannot be justified on the basis that the ruling below will have broad application, or that it somehow represents a departure from established federal law. The Petition is merely the last leg in an unsuccessful trek across the legal landscape in search of a favorable venue.

In desperation the Tribe argues that if the Arizona Supreme Court's decision is not reversed, the Tribe will be prevented from "proving its rights to the mainstream of the Gila River [which] defeats the very purpose behind the Apache Reservation," leaving it "unable to support itself in its 'permanent tribal homeland' as anticipated by this Court in *Winters* [*v. United States*, 207 U.S. 564 (1908)]." Petition at 22. The Pyramid Lake Paiute Tribe and its Trustee no doubt felt passionately about the need for sufficient water to preserve Pyramid Lake and maintain

natural spawning grounds in the lower reaches of the Truckee River. *See Nevada v. United States*, 463 U.S. at 119. There this Court concluded:

> We also hold that the Tribe, whose interests were represented in *Orr Ditch* by the United States, can be bound by the *Orr Ditch* decree. This Court left little room for an argument to the contrary in *Heckman v. United States*, 224 U.S. 413 (1912), where it plainly said that "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts . . . these wards should themselves be permitted to relitigate the question." *Id.*, at 446. See also Restatement (Second) of Judgments § 41(1)(d) (1982). We reaffirm that principle now.

Nevada v. United States, 463 U.S. at 135 (footnotes omitted). The Petition offers not a single cogent reason why this Court should accept review of the decision below, when that decision falls squarely within the reasoning in *Nevada*. Entertaining the Petition would waste this Court's limited resources.

CONCLUSION

The Tribe's Petition for Writ of Certiorari is without merit and should be denied.

Respectfully submitted this 4th day of October, 2006.

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APPENDIX TO BRIEF IN OPPOSITION OF RESPONDENT ASARCO LLC TABLE OF CONTENTS

Page

Motion to Intervene as Plaintiff, *United States of America and Gila River Indian Community v. Gila Valley Irrigation District, et al.*, Globe Equity No. 59-JCC (D. Ariz. May 25, 1990).....App. 1

Order, *United States of America and Gila River Indian Community v. Gila Valley Irrigation District, et al.*, Globe Equity No. 59-JCC (D. Ariz. July 16, 1990).....App. 3

Memorandum and Order, *United States of America and Gila River Indian Community and San Carlos Apache Tribe v. Gila Valley Irrigation District, et al.*, Globe Equity No. 59-JCC (D. Ariz. September 23, 1993).....App. 4

Amendment No. 3 To The San Carlos Apache Tribe Water Rights Settlement Agreement (December 16, 1999).....App. 14

Notice of Dismissal of Certain Claims to Water, *San Carlos Apache Tribe of Arizona v. State of Arizona, et al.*, Cause No. CIV 79-186 PHX-PGR (D. Ariz. Undated).....App. 15

Judgment and Decree, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated), Contested Case No. W1-204 (Ariz. Super. Ct. December 21, 1999).....App. 17

Minute Entry, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated), Contested Case No. W1-206 (Ariz. Super. Ct. January 5, 2000).....App. 20

APPENDIX TO BRIEF IN OPPOSITION OF RESPONDENT ASARCO LLC
TABLE OF CONTENTS – Continued

Page

ASARCO Incorporated's Motion for Summary Judgment Regarding the Preclusive Effect of the Globe Equity No. 59 Decree on the San Carlos Apache Tribe, Franklin Irrigation District, and Gila Valley Irrigation District, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated), Contested Case No. W1-206 (Ariz. Super. Ct. March 8, 2001) ..... App. 21

The San Carlos Apache Tribe's Petition for Interlocutory Review of the Grant of Partial Summary Judgment by the Superior Court in W1-206, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. November 19, 2002) ..... App. 24

The San Carlos Apache Tribe's Reply to the United States' Response to Tribe's Petition for Interlocutory Review of the Grant of Partial Summary Judgment by the Superior Court in W1-206, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. January 22, 2003) ..... App. 25

APPENDIX TO BRIEF IN OPPOSITION OF RESPONDENT ASARCO LLC
TABLE OF CONTENTS – Continued

Page

The San Carlos Apache Tribe's Consolidated Reply to Responses of Phelps Dodge Corporation, Salt River Project, City of Safford, and ASARCO Incorporated to Tribe's Petition for Interlocutory Review of the Grant of Partial Summary Judgment by the Superior Court in W1-206, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. February 3, 2003).....App. 27

Motion for Oral Argument to Grant or Deny the San Carlos Apache Tribe's Petition for Interlocutory Review and for a Ruling, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. April 16, 2004)....App. 29

San Carlos Apache Tribe's Opening Brief on the Merits, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. April 25, 2005).....App. 31

San Carlos Apache Tribe's Reply Brief, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. August 12, 2005)..... .....App. 35

San Carlos Apache Tribe's Surreply Brief, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. September 2, 2005).....App. 37

APPENDIX TO BRIEF IN OPPOSITION OF RESPONDENT ASARCO LLC
TABLE OF CONTENTS – Continued

Page

San Carlos Apache Tribe's Motion for Reconsideration, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. February 24, 2006) ..... App. 39

ASARCO LLC's Response to the San Carlos Apache Tribe's Motion for Reconsideration, *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,* Supreme Court No. WC-02-003-IR (Ariz. March 17, 2006) ..... App. 41

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, and GILA RIVER INDIAN COMMUNITY, Plaintiff in Intervention, vs. GILA VALLEY IRRIGATION DISTRICT, et. al., Defendants.	GLOBE EQUITY NO. 59 (JCC) **MOTION TO INTERVENE AS PLAINTIFF** [May 25, 1990]

* * *

[6] All of the above allegations are within the continuing jurisdiction of this Court in this matter to review, and to make orders for the enforcement of the terms of the Decree as the Court deems proper.

None of the above allegations seek to vacate the Decree, or re-litigate issues. The APACHE TRIBE does not seek to litigate rights to additional Gila River water in this matter, and no allegations have been made in the proposed Complaint in Intervention regarding *Winters* water rights. However, the APACHE TRIBE has been and will continue to litigate its claims to federally reserved *Winters* water rights in State Court in the State of Arizona "Gila River Adjudication" matter captioned *In The General Adjudication of All Rights to Use Water in the Gila River System and*

Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro), which is now pending in the Maricopa County Superior Court before the Hon. Stanley Z. Goodfarb.

Thus, the APACHE TRIBE in the proposed Complaint in Intervention, seeks only the enforcement of its water rights [7] granted under the terms of the Decree which is the subject matter of the Court's continuing jurisdiction in this matter.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. GILA RIVER INDIAN COMMUNITY, Plaintiff in Intervention, vs. GILA VALLEY IRRIGATION DISTRICT, et al., Defendants.	GLOBE EQUITY NO. 59 (JCC) ORDER [July 16, 1990]

* * *

[2] San Carlos Apache Tribe's Motion For Intervention is GRANTED on all Counts; and is STAYED as to Count VI.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, and GILA RIVER INDIAN COMMUNITY, Plaintiff in Intervention, and SAN CARLOS APACHE TRIBE, Plaintiff in Intervention, v. GILA VALLEY IRRIGATION DISTRICT, et al., Defendants.	GLOBE EQUITY NO. 59 (JCC) MEMORANDUM AND ORDER [September 23, 1993]

* * *

[13] IV. Changes in Points of Diversion and Places, Means, Manner or Purpose of the Use of the Waters of the Gila River

Issue – Should the court adopt the rule drafted by the Water Commissioner which sets forth a procedure governing transfers of water rights prescribed by the Decree?

In applicable part, Article XI of the Decree provides that

> any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or any part thereof, so far as they may do so with out injury to the rights of other parties as the same are defined herein.

In its Memorandum and Order dated September 15, 1992, the court directed the Rules Committee to prepare and submit proposed rules for transferring water rights. These rules were to be substantially similar to the Arizona water transfer statute, and provide adequate notice of proposed changes to the parties to the Decree and for summary review by the court. *Gila River,* 801 F. Supp. at 12. After several meetings of the Rules Committee, however, it became apparent that agreement would not be forthcoming. Accordingly, on the basis of the arguments set forth in the briefing and at the May, 1993 hearing, the court hereby adopts the following rule governing the transfer of water rights under the Decree:

[14] Section 1. Application for change in the point of diversion, place, means, manner or purpose of the use of waters subject to the Gila Decree

A. An application for a change in the point of diversion, place, means, manner or purpose of use of waters subject to the Gila Decree shall be filed with the Gila Water Commissioner (a "Change in Use Application").

B. The applicant, shall, at the time of filing the Change in Use Application with the Commissioner, pay a filing fee, to be determined by the Commissioner and approved by the court, and shall deposit with the Commissioner an amount sufficient to cover all costs associated with the processing of the Change in Use Application, including mailing and publication costs.

C. The application shall be in such form as prescribed by the Commissioner and shall include:

1. Name, address and telephone number of the applicant;

2. Location of existing point of diversion or place of use (legal description and map/survey) and proposed new manner of use;

3. Location of proposed new point of diversion of [sic] place of use (legal description and map/ survey) and proposed new manner of use;

4. Quantity of water involved in the change and rate of diversion (if only a portion of the water right is proposed to be transferred, a statement of how remainder will be used);

5. Purpose for which the application is filed;

6. Reference to the Gila Decree wherein the water right was defined and adjudicated and the priority date of such right;

7. Purpose of existing use and proposed purpose of use;

8. Name, address and telephone number of irrigation district or project within which existing right is used;

9. Name, address and telephone number of irrigation district within which the right would be transferred to;

10. Name of canal company presently delivering water under right and name of canal company which would deliver [15] water under proposed transfer;

11. A description of the historical use of the water right for the last ten (10) years; and

12. Such other information as may be necessary to permit complete understanding of the proposed change.

D. The application shall be accompanied by the written consent and approval of the governing body of each irrigation district, irrigation project and canal company named in C.8, 9 and 10 above or the statement of the applicant that a written request for such consent and approval was delivered or mailed, return receipt requested, to such body and forty-five (45) days have elapsed since the receipt of the application and request for approval by such body. Failure of such governing body to approve or reject the proposed application within 45 days after receipt shall constitute approval of the application.

E. A separate application must be filed for each water right affected by the proposed change or changes.

F. The applicant shall state under oath that the information contained in the application is true and correct, to the best of the applicant's knowledge at the time of filing.

G. Failure to provide the foregoing information and approvals will result in rejection of the application.

H. (1) No change in the point of diversion, place, means, manner or purpose of use shall be made under these Rules with respect to any decreed right to water which, under applicable law, has been forfeited or abandoned.

(2) The Commissioner is not authorized to make any determination as to whether a water right has or has not been abandoned or forfeited. If an objection to an application is that the water right has been abandoned or forfeited, such objection shall be determined in proceedings before the United States District Court under Section 4 herein, and the Commissioner shall not deny an application on the basis of abandonment or forfeiture.

I. If the Commissioner denies an application for any reason the applicant shall have the right to have the application heard by the court upon filing of a complaint as provided in Article XII of the Gila Decree; provided that such complaint shall also be served in accordance with Federal Rule of Civil Procedure 5(b) on the parties listed in Section 2, paragraph B.

J. If the Commissioner denies an application because the [16] applicant has failed to comply with any provision

of these rules, the applicant may file another application with the Commissioner which complies with these rules.

Section 2. Notice of Change in Use Application

A. Any party holding a water right adjudicated under the Gila Decree may file a written request with the Commissioner for special notice of all Change in Use Applications filed pursuant to these rules. The request shall state the mailing address of the party. The Commissioner shall keep a list of such requests. The Commissioner may periodically, but not more frequently than once a year, require by written notice to each such party a renewal of such request for notice.

B. Within 30 days after the application is filed the Commissioner shall send, by certified mail, return receipt requested, a copy of the application, together with a copy of a written notice setting forth the date by which objections to the application must be filed in the office of the Commissioner, to: The United States, c/o The United States Department of the Interior, Office of the Field Solicitor; Bureau of Indian Affairs, Phoenix Area Office and Superintendent, San Carlos Agency; The Franklin Irrigation District; The Gila Valley Irrigation District; The San Carlos Apache Tribe, The Gila River Indian Community; The San Carlos Irrigation and Drainage District; The San Carlos Project; The State of Arizona, c/o the Attorney General; ASARCO, Inc.; any canal companies named in the application and to each party who has filed with the Commissioner a request for special notice. Parties to whom notice is to be mailed shall file with the Commissioner a list of names and addresses to which the

notice shall be mailed which may include counsel for such parties.

C. The Commissioner shall also cause a copy of the notice of Change in Use Application to be published once a week for three successive weeks in a newspaper of general circulation in the county and counties in which the change is to occur (and in the counties of Greenlee, Graham, Pinal and Maricopa, Arizona).

D. The notice of Change in Use Application shall set forth:

(1) That the application has been filed;

(2) The date of filing;

(3) The name and address of the applicant;

(4) The location of the existing point of diversion or place of use and present manner of use;

(5) The location of the proposed new point of diversion or place of use and proposed new manner of use;

(6) The quantity of water involved in the proposed [17] change;

(7) Names of irrigation district or irrigation project and canal companies affected by the proposed change;

(8) The purpose for which the application has been filed;

(9) Date by which objections must be filed with the Commissioner.

Section 3. Objections to Change is [sic] Use Application

A. An objection to a Change in Use Application may be filed under these rules only by a person, corporation, governmental agency, Indian Tribe or other entity holding a water right under the Gila Decree for itself or in trust for another.

B. An objection to the application shall be in writing and verified and shall be filed in the office of the Commissioner on or before the date specified in the notice which shall be a date 90 days after the date of the last publication of the notice. An objection shall set forth the name, address and telephone number of the objector and shall set forth the grounds for the objection in a manner to permit complete understanding of the objection.

C. Within ten (10) business days after an objection is filed, the objecting party shall send a copy of the objection in the manner and to the parties specified in paragraph 2.B above. An objection shall also be filed within such time with the United States District Court which shall be served in accordance with Federal Rule of Civil Procedure 5(b).

D. If no objection to the application is filed in the Office of the Commissioner on or before the date specified in the notice, the Commissioner shall grant or deny the application on the basis of the information contained in the application. If the Commissioner approves the application, the Commissioner shall forthwith file the application with the Clerk of the Court with the Commissioner's affidavit setting forth the matters contained in the notice and stating that no objection has been filed pursuant to these Rules and that the Commissioner has approved the application and

shall submit an order to the court for the court's approval of the change in use. The applicant shall be responsible for the costs of preparation of such affidavit and order.

E. A party who fails to file a timely objection with the Commissioner may not object to a proposed transfer during review by the court.

Section 4. Proceedings Before the Court

[18] A. Upon the filing and service of an objection as provided in Section 3, paragraph B, the applicant or objector may request an evidentiary hearing before the court. The Federal Rules of Evidence shall apply to such hearings and the matter shall be tried without a jury.

B. The applicant shall have the burden of establishing a prima facie case of no injury to the rights of other parties under the Gila Decree and a right to transfer. Upon making such a prima facie showing, the burden of proof of proof [sic] will shift from the applicant to the objecting party to demonstrate that injury will result from the proposed change or that the applicant has no right to the proposed transfer.

C. The decision of the court regarding a Change in Use Application shall not take effect until the court enters an order approving the change and such decision becomes final. The applicant or objecting party shall have the right to appeal the order in accordance with the Federal Rules of Appellate Practice.

D. A party may seek an expedited hearing before the court upon a showing of exigent or exceptional circumstances by filing a motion for an expedited hearing

at the time a complaint is filed or subsequent to filing of a complaint as warranted by the circumstances.

E. A party found to have filed a frivolous Change in Use Application or asserting a frivolous objection thereto may be assessed costs at the discretion of the court.

* * *

AMENDMENT No. 3

TO THE SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT AGREEMENT

[December 16, 1999]

* * *

[1] **3.0** Subparagraph 4.1 at page 11, lines 1 through 6 is amended as follows (new language is italicized):

PARAGRAPH REFERENCE	SOURCE	MAXIMUM DIVERSION AMOUNT (AF/YR)
5	Salt/Black River	7,300
11	The Tribe's CAP Contract (original)	12,700
9	Ak-Chin CAP Allocation (referred to in Sections 3704(a) and 3704(b) of the Act) in normal years up to	33,300
10	CAP M&I Priority Water Previously Allocated to Phelps Dodge Corporation	14,665[3]
13	*CAP M&I Priority Water Previously Allocated to City of Globe*	*3,480*
		71,445

* * *

[3] Number used in the Act is incorrect.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

SAN CARLOS APACHE TRIBE OF ARIZONA, Plaintiff, vs. STATE OF ARIZONA, et al., Defendants.	Cause No. CIV 79-186 PHX-PGR **NOTICE OF DISMISSAL OF CERTAIN CLAIMS TO WATER** [Undated]

[1] The San Carlos Apache Tribe (herein "the Apache Tribe"), Plaintiff, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, gives Notice of Dismissal with prejudice of all claims against THE STATE OF ARIZONA, THE STATE LAND DEPARTMENT OF THE STATE OF ARIZONA; and JOHN M. LITTLE and SALT RIVER VALLEY WATER USERS' ASSOCIATION, Defendants in this action, as to surface water to the Black River and the Salt River below its confluence with the Black River, as specified in that Settlement Agreement dated March 30, 1999, between and among the Tribe, the United States, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District and other parties pursuant to the San Carlos Apache Tribe Water Rights Settlement Act of 1992 PL-102-575, as [2] amended, hereafter referred to as the "Settlement Agreement," which is attached and made a part of this Notice.

* * *

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	W-1 (Salt) W-2 (Verde) W-3 (Upper Gila) W-4 (San Pedro) Consolidated Contested Case No. W1-204 JUDGMENT AND DECREE [December 21, 1999]

[1] 1. The Court has approved the Settlement Agreement dated March 30, 1999, permanently resolving certain water rights claims of the San Carlos Apache Tribe (hereinafter referred to as the "Tribe") and of the United States acting on behalf of the Tribe that are subject to the Court's jurisdiction in this case, a copy of which Settlement Agreement is attached as Attachment 1 to the Stipulation and Request for Entry of Judgment and Decree. In this Judgment and Decree, the term "Settlement Agreement" shall include Amendment Numbers 1, 2, and 3 thereto.

2. The conditions to the enforceability of the Settlement Agreement, set forth in Paragraph 22.4 of the Settlement Agreement, have been satisfied.

* * *

[5] 12. Subject to the qualifications set forth in Paragraphs 13 and 17 hereof, neither the Tribe nor the United States acting on behalf of the Tribe shall have any right to Divert Surface Water from the Main Stem of the San Pedro River or its off-Reservation Tributaries.

* * *

[6] 17. Subparagraphs 4.2.1, 4.2.3, 4.3, 4.4, 4.5, 5.1, 5.2 and 7.0 of the Settlement Agreement, which define the rights of the Tribe and the United States on behalf of the Tribe to Surface Water from the San Pedro River, the Black River, the Salt River below its confluence with the Black River and Tributaries to these rivers, to Groundwater beneath the Reservation, and to Effluent shall be binding on all parties to the Gila River Adjudication other than as specifically excepted by Subparagraph 18.3(f) of the Settlement Agreement. Subparagraph 4.2.2 of the Settlement Agreement, which defines the rights of the Tribe and the United States on behalf of the Tribe to Surface Water from Tributaries to the Gila River, shall be binding on all Parties to the Settlement Agreement, but shall not be binding on any other parties to the Gila River Adjudication.

18. Neither this Judgment and Decree nor the Settlement Agreement shall limit, interfere with or affect in any way, any right the United States or the Tribe may have under the Globe Equity Decree.

[7] 19. The Tribe, and the United States acting on its behalf, reserve the right to assert, as specified in Subparagraphs 18.3(f), (g) and (h) of the Settlement Agreement, in the Gila River Adjudication or other court of competent jurisdiction: (1) claims against certain non-settling entities for the water supplies described in Paragraphs 4.0 and 5.0 of the Settlement Agreement, and to the Gila River and its tributaries, other than the San Pedro River and its off-Reservation tributaries, upstream of Gila Crossing; (2) objections contesting all water uses and/or claims for water rights by the non-settling entities; and (3) objections contesting the applicability of Arizona law to the

Reservation and to the water rights the Tribe and the United States acting on behalf of the Tribe.

* * *

[8] 25. Notwithstanding any other provision of this Judgment and Decree, nothing in this Judgment and Decree or in the Settlement Agreement shall limit, interfere with, or affect in any way any rights the parties to the Globe Equity Decree and their successors may have to divert and/or apply the waters of the Gila River pursuant to the Globe Equity Decree, any rights they may have to enforce the provisions of the Globe Equity Decree, and/or whatever rights they may have, if any, to pump on and/or apply Groundwater from wells located on or near lands that have a decreed right under the Globe Equity Decree, provided, [9] however, nothing in this Judgment and Decree shall be construed to determine whether or not the parties to the Globe Equity Decree may claim additional rights under the Globe Equity Decree, to such wells or to such Groundwater, based on changes in the law that may occur after the date of this Judgment and Decree.

* * *

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ( )

SPECIAL MASTER JOHN E. THORSON
Presiding

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	W-1 (Salt) W-2 (Verde) W-3 (Upper Gila) W-4 (San Pedro) Consolidated **Contested Case No. W1-206** Date: January 4, 2000

* * *

[2] 1. **Contested Case Designation**

This contested case is named and numbered as follows:

Contested Case Name: *In re the Preclusive Effect of the Globe Equity No. 59 Decree on Specified Parties.*

The "specified parties" are San Carlos Apache Tribe, Franklin Irrigation District, and Gila Valley Irrigation District.

Contested Case Number: W1-206.

* * *

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	W-1 (Salt) W-2 (Verde) W-3 (Upper Gila) W-4 (San Pedro) (Consolidated) **Contested Case No. W1-206** **ASARCO INCORPORATED'S MOTION FOR SUMMARY JUDGMENT REGARDING THE PRECLUSIVE EFFECT OF THE GLOBE EQUITY NO. 59 DECREE ON THE SAN CARLOS APACHE TRIBE, FRANKLIN IRRIGATION DISTRICT, AND GILA VALLEY IRRIGATION DISTRICT** [March 8, 2001]

* * *

[2] Pursuant to Rule 56, Arizona Rules of Civil Procedure, ASARCO Incorporated ("ASARCO") moves for summary judgment regarding the preclusive effect of the Globe Equity Decree on the water right claims of the San Carlos Apache Tribe, Franklin Irrigation District, and Gila Valley Irrigation District. This Motion is supported by the following Memorandum of Points and Authorities, and by the separately filed Statement of Facts ("SOF").

The principles of res judicata bar the San Carlos Apache Tribe from re-litigating its claims to waters of the

Gila River and the San Carlos River. It is free to litigate its claims, if any, to other tributaries to the Gila River provided its means of diversion from those tributaries does not involve diversions from either the Gila River or the San Carlos River. Similarly, the Franklin Irrigation District and the Gila Valley Irrigation District and their members are barred by the principles of res judicata from re-litigating their claims to the Gila River. They are free to litigate their claims, if any, to tributaries to the Gila River so long as their means of diversion from those tributaries do not involve diversions from the Gila River.

* * *

[20] CONCLUSION

"The policies advanced by the doctrine of res judicata, perhaps are at their zenith in cases concerning real property, land and water." *Nevada v. United States*, 463 U.S. at 129 n.10. Those policies mandate that the Globe Equity Decree bar the San Carlos Apache Tribe's claims to the Gila River beyond those adjudicated to it in the Decree, that it be precluded from asserting any claims to the San Carlos River, and that the Gila Valley Irrigation District and the Franklin Irrigation District and their members be foreclosed from asserting claims to the Gila River not recognized in the Decree. The San Carlos Apache Tribe, the Gila Valley Irrigation District and the Franklin Irrigation District and their members, remain free to assert claims to tributaries to the Gila River other than the San Carlos River so long as those claims do not involve diversions from the Gila River or the San Carlos River.

* * *

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

Supreme Court No.

Maricopa County
Nos. W-1, W-2, W-3, W-4
(Consolidated)

[Contested Case No. W1-206]

[November 19, 2002]

THE SAN CARLOS APACHE TRIBE'S PETITION FOR INTERLOCUTORY REVIEW OF THE GRANT OF PARTIAL SUMMARY JUDGMENT BY THE SUPERIOR COURT IN W1-206

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* * *

[9] The facts and circumstances related to the San Carlos Apache Reservation are fundamentally distinct from those related to the GRIC Reservation. The trial court's ruling on *res judicata* of Globe Equity will have profoundly disproportionate impact on the Apache Tribe.

* * *

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.	Supreme Court No. Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated) [Contested Case No. W1-206] [January 22, 2003]

THE SAN CARLOS APACHE TRIBE'S REPLY TO THE UNITED STATES' RESPONSE TO TRIBE'S PETITION FOR INTERLOCUTORY REVIEW OF THE GRANT OF PARTIAL SUMMARY JUDGMENT BY THE SUPERIOR COURT IN W1-206

---

* * *

[6] First, as a procedural matter, the Apache Tribe requests that this Court rule as a matter of law that the Superior Court erred when it: (1) failed to address the unique facts related to the Apache claims by incorporating the statement of facts for the separate and distant Indian Reservation, (GRIC) found in its Order from contested case W1-203 as the basis for its ruling on the Apache claims in W1-206, even though the underlying facts respecting GRIC Reservation in W1-203 have little or no applicability to the facts set forth by the [7] Apache Tribe for its Reservation in W1-206; (2) denied the Apache Tribe a trial on the merits despite the numerous material facts in dispute; and (3) refused to issue a separate opinion and order with respect to the unique legal and factual issues

posited in the Apache Tribe's motion for summary judgment.

* * *

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

Supreme Court No.

Maricopa County
Nos. W-1, W-2, W-3, W-4
(Consolidated)

[Contested Case No. W1-206]

[February 3, 2003]

THE SAN CARLOS APACHE TRIBE'S CONSOLIDATED REPLY TO RESPONSES OF PHELPS DODGE CORPORATION, SALT RIVER PROJECT, CITY OF SAFFORD, AND ASARCO INCORPORATED TO TRIBE'S PETITION FOR INTERLOCUTORY REVIEW OF THE GRANT OF PARTIAL SUMMARY JUDGMENT BY THE SUPERIOR COURT IN W1-206

---

* * *

[9] The water rights of the Apache Tribe should not be decided by implication. Phelps Dodge's observation does nothing to explain why it was not plain error for the Superior Court to base its ruling in Apache Tribe's Case (W1-206), on findings of fact and conclusions of law made in GRIC's case (W1-203). The Apache Tribe is culturally and legally distinct. The Apache Reservation is geographically distinct from the GRIC Reservation. W1-206 arises from clearly different factual and legal circumstances,

and the Tribe has presented entirely different defenses to the application of *res judicata*.[7]

* * *

[7] While the Apache Reservation comprises almost 2 million acres, with many thousands of acres located on the Gila River, the United States only received 6,000 acre-feet of water per year for the irrigation of 1,000 acres of land under the Globe Equity Decree with an 1846 priority date, with no storage rights in the San Carlos Reservoir. The water can be used for no other purpose but irrigation. This amount of water represents less than a fraction of the water needed by the Apache Tribe for irrigation purposes on the Reservation. In contrast, the United States secured 210,000 acre-feet of water per year for GRIC with an "immemorial" priority date for surface flow of the Gila River, along with 1.2 million acre-feet of storage water rights in the San Carlos Reservoir as part of the San Carlos Project, half of which benefits GRIC. However, Phelps Dodge is incorrect with its argument that the Apache Tribe has attempted to upset the application of *res judicata* based upon "purely equitable" grounds. *See* Phelps Dodge Response at 8. The Order in W1-206 violates Constitutional due process concerning valuable property rights. Nevertheless, this *is* a case in equity, and the gross inequities visited upon the Apache Tribe under the Globe Equity Decree do provide compelling evidence of the inadequate representation of the Apache Tribe by the United States in the Globe Equity proceedings.

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

Supreme Court
No. WC-02-0003-IR

Maricopa County
Nos. W-1, W-2, W-3, W-4
(Consolidated)

[Contested Case No. W1-206]

[April 16, 2004]

MOTION FOR ORAL ARGUMENT TO GRANT OR DENY THE SAN CARLOS APACHE TRIBE'S PETITION FOR INTERLOCUTORY REVIEW AND FOR A RULING

---

* * *

[3] There are ample reasons to grant the Apache Petition on its unique facts and allegations, none of which were raised by the other Petitions or Cross-Petitions.[2]

* * *

[11] The resolution of these material and unique issues for the Apache Tribe is critical. Time is of the essence. Ever increasing withdrawals of the waters of the Gila River upstream from the Apache Reservation, which would be exacerbated by the Settlement Act, have reached

---

[2] The United States' Response in Support of the San Carlos Apache Tribe's Petition for Interlocutory Review dated December 23, 2002 ("U.S. Response"), at p. 11, agreed that the Apache Tribe's claims are unique, and argued these unique claims should be accepted by the Court separately for the limited purpose of reversing the Superior Court, and remanding these issues for further consideration and resolution.

such comprehensive proportions so as to consistently deprive the Tribe of its meager right to 12.5 cfs under Globe Equity, which is the most senior right (1846) above Coolidge Dam.

The grounds for deciding whether to grant or deny an interlocutory petition for review under Paragraphs B.2., B.3., and B.4., of the Special Procedural Order, are all demonstrated by the Apache Petition. The Superior Court has ruled upon an important question of law that should be decided by the Court before further proceedings. Early Appellate review would save substantial time, expense, and there can be no doubt that "the interests of justice otherwise require early appellate review." The Apache Petition on the merits would resolve these unique issues, reduce the on going related damages to the Tribe, and encourage mitigation as early as possible. The interests of justice for the Apache Tribe, and the public interest are best served by an immediate decision by this Court to grant or deny the Apache Tribe's Petition.

* * *

WC-02-0003-IR

In the

Supreme Court

of the

State of Arizona

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated)
[Contested Case No. W1-206]

[April 25, 2005]

OPENING BRIEF ON THE MERITS

* * *

[30] The water right for the Apache Reservation set forth in the *Decree* is what it is, no more and no less, based on its definition within the terms of the *Decree*. As such, the right most closely resembles a right that would be described under the state doctrine of prior appropriation, although the right is a federal right subject to federal law, and enforceable under the exclusive jurisdiction of a federal court.[86]

As to the Tribe, the *Decree* can mean nothing more. It must be construed within its four corners. Its terms exceed

[86] SOF#220.

the authority of the federal court that entered it. With no findings of fact or conclusions of law to support the *Decree*, in contravention of the Federal Rules of Equity applied to such decrees at the time, it can mean no more nor less than the words contained within its four corners. Thus, but for 1,000 acres of land along the Gila River, the Tribal water rights for the Apache have not been adjudicated.

* * *

[31] While the question regarding the preclusiveness of the *Decree*, as presented [sic] Contested Cases W1-203 and W1-206, was identical, its answer called for (1) a **separate** examination of the unique factual history involving these two very different Indian Tribes, as well as the vastly disproportionate water rights obtained for their respective Reservations under the *Decree*; and (2) separate consideration of the different legal arguments made by the Tribe and GRIC on summary judgment, and two distinctly different legal relationships with the United States.

By adopting its findings and conclusions made for GRIC in W1-203 as the basis for its ruling on the Tribe's water rights claims in W1-206, the Superior [32] Court ignored the historical, factual and legal differences between the Tribe and GRIC, and failed to consider or otherwise rule on the different legal arguments and defenses expressly made by the Tribe in W1-206. This was reversible error.

* * *

[33] The Superior Court's failure to consider the unique factual history of the Tribe and its Reservation and related legal arguments, deprived the Tribe of any [34] opportunity to present its case and to have its arguments

considered in a meaningful way. This was clear error. The Tribe is entitled to its day in court.

* * *

[70] Similarly, in this case, the Secretary was not empowered to represent the Tribe in *Globe Equity,* or to otherwise convey or extinguish its Tribal water rights in the *Decree.* The Court should rule as a matter of law that the Secretary was not authorized to represent the Tribe or to extinguish these Tribal water rights to the Gila River mainstem by stipulating to the entry of the *Decree*, **and** that there was a lack of privity between the United States and the Tribe which precludes the [71] application of res judicata to the Tribe's water rights claims in this case.[154]

* * *

The Superior Court granted partial summary judgment against GRIC and the United States on behalf of GRIC in W1-203, in favor of the Apache Tribe, ruling that "[i]n this adjudication, neither GRIC nor the United States on behalf of GRIC shall be entitled to claim water rights relating to the mainstem of the Gila River, **including flow from the San Carlos River**, except to the extent such rights were granted to them by the *Globe Equity Decree.*" Amended Order at 25 (emphasis added). In issuing this ruling, the Superior Court failed to provide any rationale or discussion regarding this conclusion. The

---

[154] Since there was a lack of privity between the United States and the Tribe in *Globe Equity,* it follows as a matter of law that there is also a lack of **adversity** between the Tribe and the other parties to the *Decree*, which also bars the application of res judicata. Claims cannot be barred where there is no adversary relationship. *See Restatement (Second) of Judgments* § 38 (1982).

Superior Court did, however, observe that its ruling was **not** based upon any "consideration" of the Tribe's argument that the *Landowners' Agreement of 1924* specifically precluded GRIC, and the United States on behalf of GRIC, as well as SCIDD, from claiming any water rights to the San Carlos River. *Id.*

[72] Although the Tribe agrees with the Superior Court's ruling on the San Carlos River in W1-203, its failure to provide any basis for this ruling, coupled with its failure to consider or rule as a matter of law on the Tribe's argument regarding the preclusive effect of the *Landowners' Agreement of 1924*, was clear error and injects unnecessary uncertainty into this Adjudication. Given the confusion created by the Superior Court's ruling, the Tribe requests this Court to clarify the impact of the *Landowners' Agreement of 1924* here, and to rule as a matter of law that *the Landowners' Agreement of 1924*, as required by the 1924 Act, and as incorporated into the *Decree*, bars GRIC, and the United States on behalf of GRIC, from claiming any water rights to the San Carlos River in the Adjudication, pursuant to federal law, and under the doctrine of res judicata.[155]

* * *

[155] The *Landowners' Agreement of 1924* also bars SCIDD from claiming rights to the San Carlos River.

WC-02-0003-IR

In the

Supreme Court

of the

State of Arizona

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated)
[Contested Case No. W1-206]

[August 12, 2005]

REPLY BRIEF

---

* * *

[11] The Superior Court could not have considered the unique facts and related legal arguments made by the Tribe in W1-206 where it simply adopted a previous decision from an entirely different contested case – a case which involved vastly different material facts, and which contained different legal arguments and defenses to res judicata.

* * *

[14] The defense of inadequate representation was not raised by GRIC in W1-203, and even assuming *arguendo* that it had been, the Superior Court could not have resolved this issue for the Tribe in W1-206 by merely

incorporating its findings and conclusions made for GRIC in W1-203, because the underlying facts which support the Tribe's inadequate representation claim are materially different from the facts which might support a similar claim by GRIC.[26]

* * *

[26] *See* Tribe's April 25, 2005, Opening Brief on the Merits ("Opening Brief") at 48-51.

WC-02-0003-IR

In the

Supreme Court

of the

State of Arizona

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated)
[Contested Case No. W1-206]

[September 2, 2005]

SURREPLY BRIEF

* * *

[5] In the end, the parties agreed upon a unique and unprecedented contract, [6] called the *Globe Equity Decree.*

* * *

[12] Given the unique characteristics of the United States' right for the Reservation (for lands off the Reservation and subject to sale), the *Decree* demonstrates that the "real" rights of the Tribe could not be so "inextricably linked" with the resulting right in the *Decree*, as to justify a finding of a waiver of sovereign immunity by the United States in *Globe Equity* for the Tribe on the mainstem of the Gila River. *See McClendon v. United States*, 885 F.2d 627, 631 & n.1 (holding that tribe's

initiation of action concerning ownership of disputed land did not constitute waiver of the tribe's sovereign immunity as to lessees action to enforce terms of lease and where the tribe did not manifest requisite unequivocal consent to suit).[29]

* * *

[29] *See also* Tribe's Reply at 69-79 (discussing lack of Congressional authority at Issue 4); *Utah Power & Light Co. v. United States*, 243 U.S. at 389, 404 (1916) (observing that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to United States be acquired).

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

Supreme Court No. WC-02-0003-IR

Maricopa County Nos. W-1, W-2, W-3, W-4 (Consolidated)

[Contested Case No. W1-206]

[February 24, 2006]

THE SAN CARLOS APACHE TRIBE'S MOTION FOR RECONSIDERATION

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* * *

[13] Thus, even if principles of comity were to require the Court to honor the rulings of the *Globe Equity* court, the Court should not have properly based its decision upon the *Globe Equity* court's 1983 Order which is in reference to another Indian Tribe (GRIC).[12] The Tribe was not a party in the *Globe Equity* litigation until 1990. The 1983 Order was directed towards GRIC, not the Tribe, and GRIC had significantly different factual circumstances and arguments which predicated the Court's 1983 Order. Moreover, the 1983 Order did not rule regarding the preclusive effect of the *Decree* as to the Tribe **or** as to GRIC.

* * *

---

[12] Decision at 46-49.

SUPREME COURT OF ARIZONA

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE	Arizona Supreme Court No. WC-02-0003-IR Maricopa County Superior Court Nos. W-1, W-2, W-3, W-4 (Consolidated) [Contested Case No. W1-206] [March 17, 2006]

ASARCO LLC'S RESPONSE TO THE SAN CARLOS APACHE TRIBE'S MOTION FOR RECONSIDERATION

* * *

[9] Counsel for the Tribe made clear in his rebuttal oral argument that the Tribe wants to retain the right to 6,000 acre feet per annum recognized in the Globe Equity Decree, while being free to assert additional claims to the mainstem of the Gila River due to alleged inadequate representation:

> Mr. Sparks: [25:21][3]
>
> We're not asking to overturn Globe Equity 59.
>
> Mr. Sparks: [26:13]
>
> I don't think this court can find any other thing from the decree except what the parties agreed to

[3] Time references are to the time elapsed on Tape 2, Side A of the recording of oral argument in this appeal. The recording was obtained from the Clerk of the Supreme Court.

strictly within the box. And that has to be narrowly construed for res judicata.

[10] Justice Berch: [28:09]

Mr. Sparks, all of these arguments, though, the conflict of interest, the fact that relative to other users the San Carlos Apaches didn't get much water. All of that seems to go to adequacy of representation, and you started off with the claim that there was a due process violation as a result of this inadequacy of representation. Yet you started off your presentation on rebuttal saying "I'm not asking you to overturn the GE 59 Decree."

Mr. Sparks: [28:40]

That's correct. We're not. We're asking to adjudicate those rights that were not adjudicated by the decree. It doesn't overturn the decree at all.

Justice Berch: [28:49]

But aren't you claiming that none of the San Carlos Apache Tribe's water rights were adjudicated fairly in the GE 59 settlement?

Mr. Sparks: [28:56]

No. They weren't adjudicated at all. It had 8,600 acres of land that it had historically farmed. It didn't get any water rights for that.

Chief Justice McGregor: [29:06]

But if you're correct that none of those rights were adjudicated at all, then the inadequacy of representation doesn't come into play, does it? If we agree with you that the decree should be read very narrowly to only affect these very limited rights, then inadequacy of representation or not, that's a second position, or fallback position, is it?

Mr. Sparks: [29:32]

Well, the conflict of interest is straight out front. They had one, and *Nevada* didn't say that an actual conflict of interest was okay for the United States.

Chief Justice McGregor: [29:42]

But doesn't that matter only if it means that the decree is not valid?

Mr. Sparks: [29:46]

No. That matters because if there was no privity, the United States could not bind the Tribe. If it had, if it actually had a conflict [11] of interest, it couldn't bind the Tribe. Morton, the attorney for the United States, represents the San Carlos Irrigation District.

Chief Justice McGregor: [30:05]

Well, if that's correct, then the San Carlos aren't bound by anything in the decree, are they? Not even that narrow interpretation you're asking us to give?

Mr. Sparks: [30:13]

The narrow interpretation is that the Tribe is bound because of the United States – for the 1,000 acres of water right that it actually got.

Chief Justice McGregor: [30:21]

So as far as that goes, they're bound?

Mr. Sparks: [30:23]

Yes, ma'am.

Chief Justice McGregor: [30:23]

Okay.

Mr. Sparks: [30:24]

And we're not asking to overturn the decree. . . .

* * *

(4)

No. 06-173

FILED
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In the Supreme Court of the United States

SAN CARLOS APACHE TRIBE,
Petitioner,

v.

STATE OF ARIZONA,
CITY OF SAFFORD, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Arizona

BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

Jurisdiction. Does this Court have jurisdiction to review the Arizona Supreme Court's decision which only partially resolves the San Carlos Apache Tribe's federal reserved water rights claim?

Following Federal Law. Did the Arizona Supreme Court err when it followed this Court's ruling in *Nevada v. United States* and held that the San Carlos Apache Tribe cannot now claim more water from the Gila River because those same claims were settled in the 1935 *Globe Equity* Decree?

Applying Comity. Did the Arizona Supreme Court raise a new or unsettled federal question by applying comity and deferring the San Carlos Apache Tribe's argument that the United States breached its fiduciary duty in *Globe Equity* to the federal court overseeing the *Globe Equity* Decree?

PARTIES TO THE PROCEEDING

Petitioner San Carlos Apache Tribe ("SCAT" or "Tribe") is a federally recognized Indian tribe claiming at least 943,242 acre-feet of water annually in *In re the General Stream Adjudication of All Rights to Use Water in the Gila River System and Source* ("*Gila River Adjudication*"). Respondent City of Safford ("Safford") is an Arizona municipal corporation that provides utility water service in the Upper Gila Valley asserting claims in the *Gila River Adjudication* to safeguard its water service ability. The other parties to this proceeding likewise claim water rights.

TABLE OF CONTENTS

Restatement of Questions Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Jurisdiction 1

Statement of the Case 1

Reasons the Petition Should be Denied 7

I. Introduction 7

II. This Court Lacks Jurisdiction because the Decision is not Final 8

III. The Decision does not Conflict with Relevant Federal Law 10

A. The State Court Applied Federal Law 10

B. The Decision is Consistent with *Nevada* . . . 12

IV. The Decision does not Conflict with Relevant Federal Cases or Raise Important Federal Issues 14

A. *Winters* is not Relevant to the Decision 14

B. *San Carlos* is not Relevant to the Decision . . 16

V. The Decision's Application of Comity does not Raise an Unsettled Important Federal Question . 18

VI. Conclusion 22

TABLE OF AUTHORITIES

Cases

Arizona v. California,
460 U.S. 605, 103 S.Ct. 1382 (1983) 18

Arizona v. San Carlos Apache Tribe of Arizona,
463 U.S. 545, 103 S.Ct. 3201 (1983) . . . . . *passim*

Colorado River Conservation District v. United States,
424 U.S. 800, 96 S.Ct. 1236 (1976) 16, 17

Costarelli v. Massachusetts,
421 U.S. 193, 95 S.Ct. 1534 (1975) 8

Cox Broadcasting Corp. v. Cohn,
420 U.S. 469, 95 S.Ct. 1029 (1975) 1, 9

Employers Ins. of Wausau v. Bodi-Wachs Aviation Ins. Agency, Inc.,
846 F.Supp. 677 (N.D. Ill. 1994) 19

Heckman v. United States,
224 U.S. 413, 32 S.Ct. 424 (1912) 18

In re the General Adjudication of All Rights to Use Water In the Gila River System and Source,
127 P.3d 882 (Ariz., 2006) 1, 7, 10, 11

In re the General Adjudication of All Rights to Use Water in the Gila River System and Source,
134 P.3d 375 (Ariz., 2006) 1

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522 U.S. 75, 118 S.Ct. 481 (1997) 8

Johnson v. California,
541 U.S. 428, 124 S.Ct. 1833 (2004) 8

Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc.,
268 F.3d 1133 (9th Cir. 2001) 21

Nevada v. United States,
463 U.S. 110, 103 S.Ct. 2906 (1983) . . . . . *passim*

Northern Paiute Tribe v. United States,
30 Ind.Cl.Comm. 210 (1973) 20

Plotner v. AT&T Corp.,
224F.3d 1161 (10th Cir. 2000) 21

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470 U.S. 39, 105 S.Ct. 1058 (1985) 20

Watts v. Pinckney,
752 F.2d 406 (9th Cir. 1985) 21

Winters v. United States,
207 U.S. 564, 28 S.Ct. 207 (1908) 14, 15, 16

Statute

28 U.S.C. § 1257(a) 1, 8, 22

Rule

Sup. Ct. R. 10 7

Other Authorities

Arizona Department of Water Resources, TECHNICAL ASSESSMENT OF THE SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT (May 17, 1999) 15

Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. § 70 *et seq.* (1976 ed.) 20

Restatement (Second) of Judgments § 41(d) (1982) 18

Restatement (Second) of Judgments § 78.0(b) 21

OPINIONS BELOW

The Arizona Supreme Court Opinion and Order is reported as *In re the General Adjudication of All Rights to Use Water In the Gila River System and Source*, 127 P.3d 882 (Ariz., 2006). The Order Denying Motion for Reconsideration is reported as *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 134 P.3d 375 (Ariz., 2006). Minute Entry, W1-206 (Aug. 26, 2002) is unpublished. Order, W1-206 (May 17, 2002) is unpublished.

JURISDICTION

The Decision is not a final judgment under 28 USC § 1257(a), and does not fall within any exception to that rule established in *Cox Broadcasting Corp. v. Cohn.*[1]

STATEMENT OF THE CASE

In the mid- to late-1800's, along the Gila River, Congress established the Gila River Indian Reservation and then the San Carlos Apache Reservation. During that same era, non-Indian settlers homesteaded land along the Gila River and its tributaries both upstream and downstream from these reservations. Increasing water demands prompted Congress to authorize building a storage dam on the Gila River to provide water for Indians and non-Indians alike. In 1924, Congress appropriated funds to build Coolidge Dam.

---

[1] *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029 (1975).

A year later, the United States initiated the *Globe Equity No. 59* lawsuit ("*Globe Equity*") by filing a complaint in federal district court on the Indians' behalf. The lawsuit sought to: (1) establish federal water rights for both reservations; and (2) enjoin virtually all non-Indian water diversions upstream from the reservations.[2] Specifically, the complaint asserted that the United States had "reserved and appropriated ... for and on said Indian Reservations ... all of the waters of the said Gila River and its tributaries",[3] including enough water to irrigate and graze 3,000 acres on the San Carlos Apache Reservation.[4]

Two years later, the United States amended the complaint, adding legal theories to bolster tribal water claims, and focusing on preventing diversions upstream from the reservations by farmers in the Upper Gila Valley and near Coolidge, Arizona. In 1935, the remaining defendants and the United States entered into a court-approved settlement commonly referred to as the *Globe Equity* Decree ("Decree"). For the Indian's benefit, the United States received:

- First priority "immemorial" right to divert 210,000 acre-feet per year for the Gila River Indian Reservation;[5]

---

[2] Bill of Complaint, *United States v. Gila Valley Irr. Dist., Globe Equity No. 59*, at 21, 23 (October 2, 1925) (hereinafter "Bill of Complaint").

[3] *Id.*, at 21.

[4] *Id.*, at 6-7.

[5] Decree, *United States v. Gila Valley Irr. Dist., Globe Equity No. 59*, at 14 (June 29, 1935) (hereinafter "*Globe Equity* Decree").

- Second priority 1846 right to divert 6,000 acre-feet per year for the San Carlos Apache Reservation;[6] and

- 1924 priority to divert 603,276 acre-feet per year and store up to 1,285,000 acre-feet per year behind the dam.[7]

Based on the federal government's then-current estimate that the Gila River and its tributaries upstream from the reservations produced a reliable flow of 278,000 acre-feet a year,[8] the Decree granted the United States and the tribes first right to divert 78% of the system's reliable flows, leaving non-Indians only 22%, or 62,000 acre-feet per year.

After allocating and prioritizing water uses, the Decree prohibited parties from re-litigating claims asserted in *Globe Equity*:

> That each and all of the parties [including the United States on behalf of the tribes] to whom rights to water are decreed in this cause...are hereby forever enjoined and restrained from asserting or claiming...any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree...[and] this Decree shall bind, and inure to the benefits of, the grantees,

---

[6] *Id.*

[7] *Id.*, at 72.

[8] Bill of Complaint at 20 ("[t]he low water average run-off per annum of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is less than 252,529 acre feet...the flow of the said San Pedro River at all times amounts to one-tenth more or less of the said flow of the Gila River and its tributaries herein above mentioned...").

> assigns, and successors in interest of the owners of rights and parties hereto....[9]

Consistent with this provision, nowhere does the Decree expressly preserve water rights claims for either the Gila River Indian Reservation or San Carlos Apache Reservation.

After approving the Decree, the federal district court retained jurisdiction to administer the water rights documented therein and resolve any conflicts that might arise. Predictably, litigation concerning the Decree's meaning began soon after its entry and has continued ever since. Long ago, SCAT began to exercise its decreed rights, intervened in ongoing litigation, and today the Tribe actively participates in virtually all such litigation.

Meanwhile, after first contesting state jurisdiction, SCAT filed its water right claims in the *Gila River Adjudication* for at least 943,242 acre-feet per year for various uses, including irrigation, stock watering, and fisheries.[10] The Tribe bases these claims on several theories, the majority of which the United States previously asserted for SCAT's benefit in *Globe Equity*.[11] But as the simple comparison below shows, the SCAT claims filed in the *Gila River Adjudication* are essentially the same claims that were settled 71 years ago in *Globe Equity*:

---

[9] Decree at 113.

[10] See San Carlos Apache Tribe's Statement of Claimant No. 39-12676, at 2-5, 8-13, 15-16 (hereinafter "SOC No. 39-12676").

[11] *Id.*, at 3; compare Bill of Complaint, Amended Complaint, *United States v. Gila Valley Irr. Dist., Globe Equity No. 59*, (Dec. 5, 1927) (hereinafter "Amended Complaint").

	Claims Asseted in *Globe Equity*[12]	Claim Currently Asserted in the *Gila River Adjudication*[13]
Lands Included	Apache Reservation	Apache Reservation
Basis of Claims Asserted	Reserved rights Prior appropriation Aboriginal rights Treaty of Guadalupe Hidalgo Gadsden Purchase National sovereignty Municipal sovereignty	Reserved, rights Prior appropriation Aboriginal rights Treaty of Guadalupe Hidalgo Gadsden Purchase Federal orders, agreements, decrees Treaties Spanish and Mexican law State law Tribal law Tribal homeland International law
Purposes Identified	Agriculture (irrigation) Stock watering (grazing) Industry	Agriculture (irrigation) Stock watering Industrial Domestic purposes

[12] See Bill of Complaint at 4, 6, 20, and 21; see also Amended Complaint at 11, 17, 19, 21, 22, and 29.

[13] See SOC No. 39-12676; see also United States' Statement of Claimant No. 39-64259 (hereinafter "SOC No. 39-64259").

	Claims Asseted in *Globe Equity*	Claim Currently Asserted in the *Gila River Adjudication*
Purposes Identified	Power Education Administrative purposes	Municipal Mining Wildlife Recreation

Further, SCAT's *Gila River Adjudication* claims allege priority dates predating the 1935 Decree, which means these claims could have been, and should have been, raised in *Globe Equity*. Accordingly, relying on *Nevada v. United States*,[14] Safford and other water right claimants moved for summary judgment to bar SCAT, and the United States on its behalf, from asserting the same claims previously settled in *Globe Equity*. The trial court partially agreed, holding the Decree precludes water claims by SCAT to additional water from the Gila River, but not to water from its tributaries.

SCAT filed a special action interlocutory appeal to the Arizona Supreme Court challenging the lower court's decision that SCAT's claims to the Gila River are barred. Phelps Dodge cross-appealed the trial court's ruling regarding tributary waters. Accepting interlocutory review, the Arizona Supreme Court upheld the lower court's opinion and

[14] *Nevada v. United States*, 463 U.S. 110, 103 S.Ct. 2906 (1983).

remanded the matter back for further proceedings ("Decision").[15]

REASONS THE PETITION SHOULD BE DENIED

I. Introduction.

The Court lacks jurisdicton here, but when jurisdiction exists, the Court will grant review only for compelling reasons.[16] When deciding whether to review a decision by a state court, the Supreme Court generally considers whether the state court decided an important federal question that either: (i) conflicts with relevant decisions by another state court of last resort, a federal court of appeals, or this Court; or (ii) has not been, but should be, settled by this Court.[17]

SCAT is arguing that the Decision conflicts with prior Supreme Court decisions and that it involves important federal questions that this Court should resolve.[18] In making these arguments, however, SCAT virtually ignores this Court's decision in *Nevada*, which is directly on point. Although SCAT relegated this seminal case to footnote status, the state court correctly applied *Nevada*, and in doing so, followed well-settled federal law. Accordingly, the Decision did not conflict with relevant federal law or raise an undecided important federal question.

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[15] *In re the General Adjudication of All Rights to Use Water In the Gila River System and Source*, 127 P.3d 882, 903 (2006) (hereinafter "*Gila VI*").

[16] Rule 10, Rules of the Supreme Court.

[17] Rule 10(b)-(c), Rules of the Supreme Court.

[18] San Carlos Apache Tribe's Petition for a Writ of Certiorari, No. 06-173, at p. 16 (hereinafter "SCAT's Petition").

II. This Court Lacks Jurisdiction because the Decision is not Final.

SCAT is petitioning this Court to review an interlocutory decision by the Arizona Supreme Court. SCAT claims jurisdiction under 28 USC § 1257(a), which provides this Court may review "[f]inal judgments rendered by the highest court of a State . . . ." Judgments are final when they effectively determine the litigation, and are not "merely interlocutory or intermediate steps therein."[19] Further, in *Johnson v. California*, this Court held "a petition for certiorari must demonstrate to this Court that it has jurisdiction to review the judgment",[20] adding:

> Our Rules also require that each party provide a statement for the basis of our jurisdiction in its brief on the merits . . . . It behooves counsel for both petitioner and respondent to assure themselves that the decision for which review is sought is indeed a "[f]inal judgmen[t]" under § 1257. Such attention is mandated by our Rules . . . .[21]

This allows the state proceedings an opportunity to resolve the underlying disputes before the Supreme Court gets involved.[22]

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[19] *Jefferson v. City of Tarrant*, 522 U.S. 75, 81, 118 S.Ct. 481, 486 (1997).

[20] *Johnson v. California*, 541 U.S. 428, 429-430, 124 S.Ct. 1833, 1834 - 1835 (2004) (citing Court's Rule 14.1(g)).

[21] *Johnson*, 541 U.S. at 431-432, 124 S.Ct. at 1836 (citation omited).

[22] *Costarelli v. Massachusetts*, 421 U.S. 193, 196, 95 S.Ct. 1534, 1536 (1975).

In *Cox Broadcasting Corp. v. Cohn*,[23] however, this Court departed from mechanically applying this rule and identified four exceptional situations where it accepts jurisdiction even though proceedings in the lower state courts continue.[24] "In most, if not all, of the cases in these categories, these additional [state] proceedings would not require the decision of other federal questions that might also require review by the Court at a later date...."[25]

In the *Gila River Adjudication*, SCAT is asserting claims to at least 943,242 acre-feet from no specific stream or source based on mostly federal law, including:

> [A]boriginal title, Spanish law, Mexican law, Treaty of Guadalupe Hidalgo, Gadsden Treaty, Treaties with the Apaches, International law, Tribal law, Reserved rights based on Federal law, Tribal Homeland, State law and Territorial law, Executive Orders, Agreements and Understandings with the United States and Court Decrees.[26]

Safford agrees with the Arizona Supreme Court that the Decision is conclusive as to the Gila River mainstem, and therefore, precludes some portion of SCAT's current claim. But under the Decision, SCAT's claims to tributary waters remain unresolved. Undoubtably, SCAT will continue to press these claims in an attempt to establish water rights to the tributaries based on federal law. That means the ongoing state proceedings may give rise to other federal questions

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[23] 420 U.S. 469, 95 S.Ct. 1029.
[24] *Id.*, 420 U.S. at 477, 95 S.Ct. at 1037.
[25] *Id.*, 420 U.S. at 477-478, 95 S.Ct. at 1037.
[26] See SOC No. 39-12676 at 3.

possibly requiring Court review later. Thus, SCAT cannot establish that the federal issues surrounding its claim are resolved, and consequently, it failed to establish that this Court has jurisdiction over the Decision.

III. The Decision does not Conflict with Relevant Federal Law.

A. The State Court Applied Federal Law.

The central issue in this case is whether the Decree entered in 1935 precludes claims now advanced by SCAT, and the United States on its behalf, in the *Gila River Adjudication*.[27] Pronouncements by this Court mandate that the state court must apply federal law "to give the Decree the same preclusive effect as the federal courts would give it."[28] To determine whether *res judicata* bars SCAT's current claims, the state court applied the three federal claim preclusion elements:

> (1) an identity of claims in the suit in which a judgment was entered and the current litigation,
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> (2) a final judgment on the merits in the previous litigation, and
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> (3) identity or privity between parties in the two suits.[29]

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[27] *Gila VI*, 127 P.3d at 884.
[28] *Id.*, 127 P.3d at 887.
[29] *Id.*, 127 P.3d at 887-88.

Noting that no parties questioned that the Decree is a final judgment,[30] the state court had to address whether the claims were the same and whether privity existed between the United States and SCAT.[31]

As to the Gila River mainstem, the state court began its analysis by finding that in *Globe Equity*, on SCAT's behalf, the United States asserted various claims based on wide-ranging theories such as "occupancy and possession", reserved rights, and prior appropriation.[32] The United States then settled these claims in the *Globe Equity* Decree for second priority to 6,000 acre-feet. The state court then noted that the Decree expressly precludes additional claims for the SCAT reservation:

> [A]ll of the parties to whom rights to water are decreed in this cause ··· are hereby forever enjoined and restrained from asserting or claiming-as against any of the parties herein ···- *any right, title or interest in or to the waters of the Gila River, or any thereof*, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof····[33]

Based on the Amended Complaint and the Decree, the state court properly held that the United States placed SCAT's water rights to the Gila River at issue and resolved those

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[30] *Id.*, 127 P.3d at 888.

[31] *Id.*

[32] *Id.*, 127 P.3d at 894.

[33] *Id.*, 127 P.3d at 895 (citing Decree at Art. XII)(emphasis added.)

claims. Thus, pursuant to federal law, the state court correctly ruled that SCAT's claims for Gila River water in excess of its decreed rights are barred.[34]

B. The Decision is Consistent with *Nevada*.

The state court's straightforward analysis regarding the Gila River mainstem follows the Decree's express provisions and flawlessly follows this Court's reasoning in *Nevada*. *Nevada*'s facts are almost identical to those presented here. Just like this case, in the early 1900s the United States, on behalf of the Pyramid Lake Indian Tribe, filed a suit known as *Orr Ditch* asserting reserved rights to divert water from the Truckee River.[35] After litigating and negotiating for 31 years, in 1944 the United States settled these claims with non-Indian water users in the *Orr Ditch* consent decree, which enabled the tribe to irrigate 3,130 acres on the reservation with an 1859 priority.[36] That decree expressly enjoined parties from claiming additional rights to the river.[37]

Then in 1973, the United States filed another lawsuit claiming additional reserved water rights for fishing purposes. Although the *Orr Ditch* decree did not expressly preserve any claims, the United States argued that the *Orr Ditch* decree settled only a portion of the reserved water rights.[38] Defendants responded by asserting that the *Orr Ditch* decree settled all claims for the reservation and *res judicata* barred claims for more water.[39] This Court agreed with the

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[34] *Id.*
[35] *Nevada*, 463 U.S. at 116, 103 S.Ct. at 2911.
[36] *Id.*, 463 U.S. at 117, 103 S.Ct. at 2911.
[37] *Id.*, 463 U.S. at 132, 103 S.Ct. at 2919.
[38] *Id.*, 463 U.S. at 119, 103 S.Ct. at 2912.
[39] *Id.*, 463 U.S. at 119, 103 S.Ct. at 2913.

defendants and unanimously held that the claim for more water for fishery purposes was barred by *res judicata* because "it seems quite clear to us that [the United States and Paiute Tribe] are asserting the same reserved right" that was asserted in the first action.[40]

The facts and issues presented in *Nevada* are strikingly similar to those here. In both cases, the United States represented tribal interests and asserted all theories for reservation water rights.[41] The federal government settled both cases by consent decree only nine years apart: *Orr Ditch* in 1944 and *Globe Equity* in 1935.[42] Most importantly, both decrees expressly forbid parties from claiming additional water with very similar language:

The *Orr Ditch* Decree Language

The decree enjoins parties "from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries . . . except the rights, specified, determined and allowed by this decree."[43]

The *Globe Equity* Decree Language

Parties "are hereby forever enjoined and restrained from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any thereof,

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[40] *Id.*, 463 U.S. at 134, 103 S.Ct. at 2920.

[41] See SOC No. 39-12676; SOC No. 39-64259; compare *Nevada*, 463 U.S. at 113, 103 S.Ct. at 2910.

[42] *Globe Equity* Decree; *Nevada*, 463 U.S. at 118, 103 S.Ct. at 2912.

[43] *Nevada*, 463 U.S. at 132, 103 S.Ct. at 2919.

except the rights specified, determined and allowed by this decree."[44]

Knowing the *Globe Equity* Decree expressly prohibits SCAT's claims for more water from the Gila River, the state court applied *Nevada* and barred SCAT's claims for more water from the Gila River, which is both consistent with federal law and correct.

IV. The Decision does not Conflict with Relevant Federal Cases or Raise Important Federal Issues.

Although *Nevada* is directly on point and the state court Decision is consistent with *Nevada*, SCAT avoids *Nevada* in its petition altogether. Instead, the Tribe wrongly argues that the Decision conflicts with *Winters* and *San Carlos*,[45] and attempts to create legal questions it wants this Court to resolve. But these arguments fail because neither *Winters* nor *San Carlos* is on point and this case does not raise a new federal question that this Court need answer.

A. *Winters* is not Relevant to the Decision.

SCAT contends that the Decision conflicts with *Winters* because "without the waters of the Gila River mainstream, the Tribe will be unable to support itself in its 'permanent tribal homeland' as anticipated by this Court in *Winters*."[46] SCAT is suggesting that unless it can take more water from the Gila

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[44] *Globe Equity* Decree at 113.

[45] *Winters v. United States*, 207 U.S. 564, 28 S.Ct. 207 (1908); *Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 103 S.Ct. 3201 (1983).

[46] SCAT's Petition at p. 22.

River, the Tribe cannot live on the reservation, and therefore, the Decision conflicts with *Winters*.

While making this argument, however, SCAT ignores that the Decision and *Winters* address different issues. In *Winters*, Congress adopted a treaty creating a reservation in Montana to serve as a permanent home for two Indian tribes.[47] The treaty was silent on water rights. Soon after Congress formed the reservation, settlers upstream began diverting water from the river bordering the reservation. The federal government then brought a lawsuit to enjoin the settlers from interfering with water use on the reservation.[48] This Court held that Congress, by creating the reservation, impliedly reserved all unappropriated river water necessary to effectuate the purposes of an Indian reservation.[49]

In contrast, unlike *Winters*, the Decision does not address the establishment of reserved rights. Here, SCAT's reserved rights had already been asserted and settled over 70 years ago in federal court. The Decision addresses the preclusive effects of that prior litigation which quantified those rights.

SCAT's argument also conveniently ignores that its 6,000 acre-feet per year decreed in *Globe Equity* is just one component of its water resources. SCAT's reservation includes an estimated 19.5 million acre-feet of recoverable groundwater.[50] In addition, it recently settled its claims to the Salt River system for 67,965 acre-feet per year, including

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[47] *Winters*, 207 U.S. at 565, 28 S.Ct. at 208.

[48] *Id.*

[49] *Id.*, 207 U.S. at 576-77, 28 S.Ct. at 2.

[50] See Arizona Department of Water Resources, TECHNICAL ASSESSMENT OF THE SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT, pp. 5-19 (May 17, 1999).

60,665 acre-feet of Central Arizona Project water.[51] This is a considerable amount of water for a population of under 13,000 members.[52] In contrast, the City of Safford uses approximately 6,000 acre-feet a year to meet the water demands of 25,000 people and ancillary uses. Thus, arguing that the Decision leaves SCAT dry, and thereby contradicts *Winters*, is nonsense.

B. *San Carlos* is not Relevant to the Decision.

The Tribe's argument that the Decision conflicts with *San Carlos* is wrong as well. Like *Winters*, the Decision deals with entirely different issues than those presented in *San Carlos*.

Whereas the Decision addresses the preclusive effects of a prior water rights decree of an Indian tribe, *San Carlos* deals with state jurisdiction over Indian water right claims. *San Carlos* is the sequel to *Colorado River Conservation District v. United States,*[53] where this Court held that the McCarran Amendment provides state courts with jurisdiction to adjudicate Indian water right claims held in trust by United States, and that suits brought in federal court were properly stayed in favor of concurrent state court adjudication.[54] Following *Colorado River*, the United States joined the then-ongoing Arizona general stream adjudications. But SCAT and other Indian tribes from Arizona and Montana spurned the state court adjudications and filed suits to resolve their

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[51] *Id.*, at pp. 3-1.

[52] SCAT's Petition at p. 2.

[53] *Colorado River Conservation District v. United States,* 424 U.S. 800, 96 S.Ct. 1236 (1976).

[54] *Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 548-549, 103 S.Ct. 3201, 3204 - 3205 (1983).

water right claims in federal district court. This action by the tribes raised what this Court called two issues "parallel" to *Colorado River*:

> (1) What is the effect of the McCarran Amendment in those States which ... were admitted to the Union subject to federal legislation that reserved "absolute jurisdiction and control" over Indian lands in the Congress of the United States?
> (2) If the courts of such States do have jurisdiction to adjudicate Indian water rights, should concurrent federal suits brought by Indian tribes, rather than by the United States, and raising only Indian claims, also be subject to dismissal under the doctrine of *Colorado River*?[55]

Consistent with its earlier decision, the *San Carlos* Court held that, regardless of general federal limitations of state jurisdiction over Indian matters, the McCarran Amendment grants state courts jurisdiction to adjudicate Indian water right claims.[56] This Court further held that the district courts usually should defer to the state general stream adjudications.[57] These holdings are not relevant to the *res judicata* issues presented in the Decision. Accordingly, the Decision does not directly conflict with *San Carlos*.

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[55] *Id.*, at 463 U.S. 549, 103 S.Ct. at 3205.
[56] *Id.*, 463 U.S. at 564-65, 103 S.Ct. at 3212.
[57] *Id.*, 463 U.S. at 570, 103 S.Ct. at 3215.

V. The Decision's Application of Comity does not Raise an Unsettled Important Federal Question.

The state court action did not raise a new or unsettled federal question by deferring SCAT's argument that the United States breached its fiduciary duty in *Globe Equity* to the federal court overseeing the Decree. This Court has long held that when the federal government represents a tribe in court, the outcome binds both the United States and the tribe.[58] Consistently, the *Nevada* Court found that the United States had represented tribal interests in the *Orr Ditch* water rights litigation and held that the *Orr Ditch* decree bound the tribe and precluded its additional reserved rights claims.[59] Similarly, the United States represented SCAT in *Globe Equity* and resolved its reserved rights claims to the Gila River. Thus, the United States' representation of SCAT in *Globe Equity* binds SCAT now. The Decision merely applied well-settled law.

To avoid this rule, SCAT argues that the United States' representation in *Globe Equity* was inadequate and that the state court's refusal to allow it to "present" this claim – instead of deferring the issue to the federal courts under the

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[58] See *Nevada*, 463 U.S. at 135, 103 S.Ct. at 2921; *Heckman v. United States*, 224 U.S. 413, 443-46, 32 S.Ct. 424, at 433-34 (1912); *Arizona v. California*, 460 U.S. 605, 626-628, 103 S.Ct. 1382, 1395-1396 (1983).

[59] *Nevada*, 463 U.S. at 135, 103 S.Ct. at 2921 (citing *Heckman v. United States*, 224 U.S. 413, 32 S.Ct. 424, where it plainly said that "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts . . . these wards should themselves be permitted to relitigate the question." *Id.*, at 446, 32 S.Ct., at 435. See also Restatement (Second) of Judgments § 41(d) (1982)).

comity doctrine – violates federal law. This argument is misplaced for several reasons.

First, the United States did not breach its fiduciary duty to SCAT. In the early 1900s, the United States simply observed that SCAT had few irrigable acres and believed the Tribe was better suited to raising cattle rather than farming.[60] SCAT's decreed water allocation reflects the reservation's geographic realities and economic viabilities in the early 1900s rather than a breach of fiduciary duty.

Second, the state court did not stop SCAT from presenting its defenses to summary judgment. SCAT had every opportunity to make all of its arguments in response to the motions, and it made those arguments, but none were persuasive enough to overcome the express preclusions in the Decree and the binding precedent set forth in *Nevada*. Moreover, as the party seeking to defeat summary judgment, SCAT was required to "wheel out all its artillery to defeat it" at the time of the motion.[61] The state court did not have to establish additional hearings to determine if there was

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[60] See Report on San Carlos Reservation from Supervisor Charles E. Dagenett to Commissioner of Indian Affairs, at 3-4 (April 14, 1922) ("This Reservation is essentially a stock country and these people take much more readily to working stock than they do to farming, and every possible effort should be made to develop their stock industry, rather than farming, especially where the water has to be secured by pumping."); see also Letter from Superintendent Kitch to Commissioner (June 13, 1928) ("[T]hese Indians could be placed at a much better advantage in the cattle industry as farming was found not to be profitable and to be costing more from tribal funds each year than was derived.).

[61] *Employers Ins. of Wausau v. Bodi-Wachs Aviation Ins. Agency, Inc.*, 846 F.Supp. 677, 685 (N.D. Ill. 1994).

additional evidence that might support SCAT's claim that the United States inadequately represented the Tribe in *Globe Equity*.

Third, even if the federal government had inadequately represented SCAT, which Safford disputes, then the Tribe should have asserted that claim against its trustee in the Indian Claims Commission for monetary damages; not against parties to the Decree in state proceedings seeking more Gila River water. Congress gave the Indian Claims Commission exclusive jurisdiction over tribal claims that the United States either failed to engage in fair dealings or breached a fiduciary duty owed to tribes.[62] This Court's pronouncements in *Nevada* clarified that the proper forum for tribal assertions regarding the quality of federal representation in water right lawsuits was the Indian Claims Commission.[63] That forum is where SCAT should have sought its remedy against the United States.[64] The *Gila River Adjudication* is not the proper

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[62] See Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. § 70 *et seq.* (1976 ed.)(Establishing an Article I tribunal with power to decide claims of Indian tribes against the United States); See generally *United States v. Dann,* 470 U.S. 39, 105 S.Ct. 1058 (1985).

[63] *Nevada*, 463 U.S. at 135 n.14, 103 S.Ct. at 2921 n.14 ("We, of course, do not pass judgment on the quality of representation that the Tribe received. In 1951 the Tribe sued the Government before the Indian Claims Commission for damages, basing its claim of liability on the Tribe's receipt of less water for the fishery than it was entitled to. *Northern Paiute Tribe v. United States*, 30 Ind.Cl.Comm. 210 (1973). In a settlement the Tribe was given $8,000,000 in return for its waiver of further liability on the part of the United States.").

[64] See *Nevada*, 463 U.S. at 145, 103 S. Ct. at 2926 (Brennan, J., concurring) ("If, however, the United States actually causes harm through a breach of its trust obligations the Indians should have a

forum to appraise whether the United States adequately represented SCAT 71 years ago in *Globe Equity*. The *Gila River Adjudication* court is supposed to determine the scope and extent of water rights. It does not have the jurisdiction to invalidate a federal decree and grant SCAT additional Gila River water rights in degradation of other Decree parties' water rights. Even if SCAT had a valid breach of fiduciary duty claim against the United States, it chose the wrong forum and sought the wrong remedy.

Fourth, the law is clear that a party contesting a federal district court ruling must seek relief from that ruling in that same court.[65] The Restatement of Judgments clearly states, "[r]elief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment."[66] Further, here the federal district court has continuing jurisdiction over the Decree, and SCAT has been a party to those proceedings since 1990. SCAT has never raised the inadequate representation issue in that forum, apparently because the Tribe believes that the *Globe Equity* court would not allow it to pursue its preferred remedy, i.e., to obtain more water from the Gila River. But this is no reason for the state court to consider an issue that may destroy

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remedy against it. I join the Court's opinion on the understanding that it reaffirms that the Pyramid Lake Paiute Tribe has a remedy against the United States for the breach of duty that the United States has admitted. ").

[65] *Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc.*, 268 F.3d 1133, 1136 (9th Cir. 2001); *Plotner v. AT&T Corp.*, 224F.3d 1161, 1170 (10th Cir. 2000); *Watts v. Pinckney*, 752 F.2d 406 (9th Cir. 1985).

[66] Restatement (Second) of Judgments § 78.0(b).

the long-established balance of a federal decree, especially where the federal court retains jurisdiction over the subject matter.

Finally, in its petition, SCAT relies on policy statements pronounced in *San Carlos* to argue that the state court cannot apply the comity doctrine. In that case, this Court noted the judicial bias against piecemeal litigation where both state and federal courts might duplicate efforts, waste resources, and rush to judgment.[67] But this dicta is not controlling federal law and should not prevent the state court from employing the comity doctrine by deferring to the federal district court with continuing jurisdiction over the Decree. The state court's application of comity ensures that SCAT's breach of fiduciary duty argument is not heard in the wrong forum, efforts will not be duplicated, resources will not be wasted, and there will not be two competing decisions. Clearly, the state court correctly applied the comity doctrine in the Decision.

VI. Conclusion.

The Decision is <u>not</u> a final judgment under 28 USC § 1257(a), and does not fall within any exception to that rule. Even if this Court had jurisdiction to hear the issues raised, SCAT's petition should be denied because the Arizona Supreme Court followed well-settled federal law holding that SCAT's claims to take more water from the Gila River are barred by the preclusive effects of the *Globe Equity* Decree. Further, the state court's application of the comity doctrine did not raise an unsettled important federal question. Accordingly, SCAT's petition should be denied.

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[67] *San Carlos*, 463 U.S. at 547, 103 S.Ct. at 3204.

Respectfully Submitted,

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No. 06-173

IN THE

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

BRIEF IN OPPOSITION FOR RESPONDENTS GILA VALLEY IRRIGATION DISTRICT AND FRANKLIN IRRIGATION DISTRICT

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QUESTION PRESENTED

Whether the Arizona Supreme Court was correct in declining to consider the San Carlos Apache Tribe's claim that a consent decree, entered by the United States District Court for the District of Arizona, is not binding on the Tribe because the United States allegedly inadequately represented the Tribe in the underlying litigation and when negotiating the terms of the consent decree.

CORPORATE DISCLOSURE STATEMENT

The Gila Valley Irrigation District and the Franklin Irrigation District are Arizona municipal corporations facilitating the delivery of water from the Gila River in Graham and Greenlee counties in Arizona. The Irrigation Districts do not issue stock and interests in the Irrigation Districts are not publicly traded.

TABLE OF CONTENTS

	Page
Question Presented	i
Corporate Disclosure Statement	ii
Table of Contents	iii
Table of Cited Authorities	iv
Table of Appendices	ix
Statement of the Case	1
A. The Globe Equity Decree and the Apache Tribe's Water Resources.	1
B. The Apache Tribe's poverty.	6
Reasons for Denying the Petition	6
A. Introduction.	6
B. This Court's decision in Arizona v. San Carlos Apache Tribe does not require the state courts to determine the United States inadequately represented the Tribe in District Court.	13
C. The decision below does not violate the due process and equal protection provisions of the fifth and fourteenth amendments to the Constitution.	17
Conclusion	21

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Page

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Arizona v. California, 460 U.S. 605 (1983) 9

Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983) 13

Brooks v. United States, 119 F.2d 636 (9th Cir. 1941) 14

Calderon v. Thompson, 523 U.S. 538 (1998) 12

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) 13

Fort Mohave Tribe v. United States, 32 Fed. Cl. 29 (1994) 10

Gila Valley Irrigation District v. United States, 118 F.2d 507 (9th Cir. 1941) 14

Heckman v. United States, 224 U.S. 413 (1912) ... 12

In re: The Application For Water Rights of United States, 101 P.3d 1072 (Colo. 2004) 12

Cited Authorities

Page

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Nevada v. United States, 463 U.S. 110 (1983) 8, 9, 16, 18

Orion Tire Corp. V. Goodyear Tire & Rubber Co., 268 F.3d 1133 (9th Cir. 2001) 17

Plotner v. AT&T Corp., 224 F.3d 1161 (10th Cir. 2000) 17

Rivet v. Regions Bank of Louisiana, 522 U.S. 470 (1998) 16

San Carlos Apache Tribe, et al. v. Superior Court of Arizona, 193 Ariz. 195, 972 P.2d 179 (1999) ... 19

Cited Authorities

Page

Stovall v. City of Cocoa, Fla. 117 F.3d 1238 (11th Cir. 1997) 11

United States v. City of Miami, Florida, 664 F.2d 435 (5th Cir. 1981) (en banc) 11

United States v. Gila Valley Irrigation District, 117 F.3d 425 (9th Cir. 1997) 13, 14

United States v. Gila Valley Irrigation District, 804 F. Supp. 1 (D. Ariz. 1992) 14

United States v. Gila Valley Irrigation District, 920 F. Supp. 1444 (D. Ariz. 1996) 4, 14

United States v. Gila Valley Irrigation District, 959 F.2d 242 (9th Cir. 1992) (unpublished) 14

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Cited Authorities

Page

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Cited Authorities

Page

U.S. CONSTITUTION RULES & STATUTES

Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, Titles II and III, 118 Stat. 3478 ..... 16, 20

Federal Rule of Civil Procedure 60(b) 15

Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, Title IV, 104 Stat. 4469 20

Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549 20

United States Supreme Court Rule 10 ..... 7, 16

TABLE OF APPENDICES

Page

Appendix A — Stipulation For And Consent To The Entry Of A Final Decree Filed June 29, 1935 ... 1a

Appendix B — Minute Order Of The Superior Court Of Arizona Maricopa County Filed April 4, 2002 ..... 16a

Appendix C — Memorandum And Order Of The United States District Court For The District Of Arizona Filed September 30, 1993 ..... 19a

STATEMENT OF THE CASE

The Gila Valley Irrigation District and the Franklin Irrigation District (the "Upper Valley Irrigation Districts") incorporate by reference the statement of facts in part I of the opinion below, *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. 64, 67-69, 127 P.3d 882, 885-87 (2006), *reconsideration denied*, 212 Ariz. 470, 134 P.3d 375 (2006); Petitioner's Appendix A at 2a-8a (hereinafter "Petitioner's App.__").

The only issue to be decided is whether the Arizona Supreme Court erred when, on grounds of comity, the Court refused to consider whether the alleged inadequate representation by the United States of the San Carlos Apache Tribe ("Apache Tribe" or "Tribe") deprives the Globe Equity No. 59 Decree of *res judicata* effect. Despite the narrowness of this issue, the Apache Tribe devotes much of its Statement of the Case and its Petition to describing the relatively poor current economic conditions of the Apache Tribe, understating the Tribe's water resources, and criticizing the state court adjudication process in Arizona. These contentions, introduced in the Tribe's Statement of Facts and found throughout Apache Tribe's Petition, are unfounded, misleading, and not relevant to the issue presented.

A. The Globe Equity Decree and the Apache Tribe's Water Resources.

The Apache Tribe mischaracterizes the nature of its water rights under the Decree that was given preclusive effect by the Arizona Supreme Court.[1] The Decree is based on litigation that

1. The decree (hereinafter the "Decree") entered by the United States District Court for the District of Arizona in 1935, decrees 6000 acre-feet of water to the United States on behalf of the Apache Tribe. In (Cont'd)

began in 1925. The claims of the United States on behalf of the Apache Tribe (and others) were initially stated in the Amended Complaint, dated December 5, 1927. In that complaint, on behalf of the Apache Tribe, the United States alleged federal reserved rights, aboriginal rights, and prior appropriation rights. *See In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. at 76-77, 127 P.3d at 894-95; Petitioner's App. A at 26a-31a; Appendix to the Phelps Dodge Corporation's Conditional Cross-Petition for Writ of Certiorari, p. 56, ¶ 7 (aboriginal rights), pp. 58-60, ¶ 9 (aboriginal and reserved rights), and p. 60, ¶ 7 (prior appropriation rights). The United States eventually negotiated a settlement, now embodied in the Decree, whereby the United States, on behalf of the Apache Tribe, was decreed the rights to 6000 acre-feet of water from the mainstem of the Gila River with a priority right senior to all other rights, except those of the United States on behalf of the Gila River Indian Reservation.[2] *See* Decree (the "Decree")

(Cont'd)
this Brief, for purposes of simplicity, the water rights, while belonging to the United States, are often described as the Apache Tribe's rights without repeating that title is held by the United States.

2. The Tribe's description of the rights of the United States on behalf of the Gila River Indian Community and the San Carlos Project is misleading because the description makes it appear as if the rights under various priorities are all cumulative. *See* Petition at 7 n.11. In fact, many rights with a particular priority are subsumed in rights with another priority. *See* Decree 105, Petitioner's Supp. App. at 217

> That certain of the foregoing rights, as listed under items (1), (3) and (4) above are inclusive one of the other so that diversions thereunder do not accumulate, and the amounts in acre feet per season and cubic feet per second stated in the 3rd item include those given in the 1st and those stated in the 4th item include those given in the

(Cont'd)

entered in *United States v. Gila Valley Irrigation District*, Globe Equity 59, June 29, 1935, at 14, 86; Supplemental Appendix to Petitioner's Petition for Certiorari, at 126,198 (hereinafter "Petitioner's Supp. App.__").

The Decree was intended to be a final and complete determination of all the parties' rights, forever barring them from claiming additional rights. *See* Decree at 6, 113; Petitioner's Supp. App. at 118 ("[T]he plaintiff and the parties defendant . . . have concluded and settled all issues in this cause as between plaintiff and said parties defendant"). The Decree enjoins the parties, their successors, and assigns from claiming any additional rights to the Gila River.

> [E]ach and all of the parties to whom rights to water are decreed in this cause . . . their assigns and successors . . . and all persons claiming by, through or under them and their successors, are hereby forever enjoined and restrained from asserting or claiming . . . any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree. *Id.* at 113, Petitioner's Supp. App. at 225.

Nevertheless, in the general adjudication below,[3] the Apache Tribe and the United States on behalf of the Tribe claimed

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(Cont'd)

> 1st and 3rd; in each instance representing the total diversion allowable under that priority and those prior thereto as described in said items.

3. The state court case below is entitled the *In re all Rights to Use Water In the Gila River System and Source*, Maricopa County Superior Court Cause Nos. W1, W-2, W-3, and W-4 (Consolidated) (hereinafter the "General Adjudication")

additional rights to the Gila River far beyond those provided by the Decree. *See* Petitioner's Supp. App. 42-102.

The Apache Tribe claims that the Decree limits its water usage to irrigation and that the members of the Tribe are not permitted to allow their livestock to drink the water or even to drink the water themselves. *See* Petition, at 7 n.11, & 14-15, 26. Ironically, it was the Tribe that, over the objections of other parties to the Decree, convinced the federal District Court to rule that the Decree initially limits use of water to irrigation. *See United States v. Gila Valley Irrigation District*, 920 F. Supp. 1444, 1476-77 (D. Ariz. 1996) ("The government and the Apache Tribe argue that Article XI of the Decree limits the use of the Gila River water to irrigating 'crops of value' *** The Court concludes, therefore, that the Decree was intended to establish an order of priorities for water that would be devoted primarily to agriculture"). More important, however, the Tribe's argument is misleading. While the initial use of water permitted by the Decree is irrigation, the Decree also provides that any party may change the use and the District Court has established detailed procedures for changing the use. *Id.* at 1476-77

> Not all such uses would necessarily violate the Decree. . . . [the] parties may change the purpose of the use of decree waters, 'so far as they may do so without injury to the rights of other parties.' . . . To the extent that a change in use reduces a user's water requirement, the Commissioner must ensure that the diversion is appropriately limited;

Memorandum and Order, dated September 30, 1993, at 16-18, Upper Valley Irrigation Districts' Appendix C at 32a-41a (hereinafter "UVID App.___"). (Providing procedures for changing a use of water under the Decree).

The Tribe also argues that the Decree left it with water resources that are woefully inadequate for the needs of its reservation. *See* Petition at 3, 9 n.15, 14-15, 22, 26. That claim is also misleading. The Tribe is not limited to using water from the mainstem of the Gila River. The San Carlos Apache Tribe Water Rights Settlement Act of 1992 confirmed the Tribe's rights to 71,445 acre-feet of surface water per year from the Salt and Black Rivers for use on its reservation.[4] In addition, the Arizona Supreme Court held that Indian tribes have a reserved right to groundwater for use on Indian reservations. *See In re the General Adjudication of All Rights to Use Water In the Gila River System and Source*, 195 Ariz. 411, 418-19, 989 P.2d 739, 746-47 (1999). The amount of groundwater available to the Tribe on its reservation has not been quantified, but it is undoubtedly substantial. Finally, the decision by the Arizona Supreme Court did not preclude the Tribe's claims to the tributaries to the Gila River. Just two of those tributaries produce an average runoff that exceeds 52,000 acre-feet per year, some of which the Tribe is already using.[5] While the decision below did preclude the

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4. Pub. L. No. 102-575, §§ 3701 *et seq.*, 106 Stat. 4600, 4740.

5. *See* USGS, *Water Resources Data Arizona Water Year 2005*, UVID Appendix D at 50a. The San Carlos River produces an average runoff of 43,200 acre-feet per year; Bonita Creek produces 8,810 acre-feet per year. The Apache Tribe is already taking advantage of the San Carlos River, having dammed the San Carlos and Blue rivers to create Talkalai Lake with a surface area of approximately 600 acres, which the Tribe uses for fishing and recreational purposes. *See San Carlos Apache Tribe, Recreation & Wildlife Dept. (Fishing), http://www.sancarlosrecreationandwildlife.com/fishing.html.* Similarly, while the Tribe claims it is not permitted to use the water in the San Carlos Reservoir (Petition at 3), it nevertheless uses that water for fishing and recreational purposes. *Id.* Data for other tributaries is not readily available.

Tribe from making additional claims to the mainstem of the Gila River, the Tribe grossly overstates the decision's impact on its overall water supplies.

B. The Apache Tribe's poverty.

The Apache Tribe also argues that it is poor. The Tribe argues that no boundary marker is necessary to show where the reservation begins because there is obvious prosperity on one side of the boundary line and "stunning" poverty and despair on the Apache side. *See* Petition at 3-4. The Tribe does not cite to any evidence that would establish an immediate and abrupt contrast in prosperity at the boundary of its reservation. Nor does the Tribe offer any evidence that its poverty is attributable to the *res judicata* effect of the Globe Equity Decree. Moreover, if the farmlands on the Apache side of the Reservation boundary are in fact impoverished, the Globe Equity Decree offers a solution. The Decree authorizes the United States to acquire farmland for the Tribe "within the valley of the Gila River above the eastern boundary of said Reservation." *Id.* at 86, Petitioner's Supp. App. at 198.

REASONS FOR DENYING THE PETITION

A. Introduction.

The decision by the Arizona Supreme Court is a narrow one. In the state trial court, the Upper Valley Irrigation Districts and other parties successfully argued that the Decree, entered in 1935 by the United States District Court for the District of Arizona, has preclusive effect on the Apache Tribe's claims to the mainstem of the Gila River. On appeal to the Arizona Supreme Court, the Apache Tribe

argued, among other things, that the Decree should not have preclusive effect because the United States had not adequately represented the Tribe in the United States District Court. The Arizona Supreme Court rejected the argument on grounds of comity, ruling that the Tribe should have raised its inadequate representation arguments in the District Court when it successfully intervened in 1990 to represent its own interests in the Globe Equity litigation. *See* Pet. App. at 46a-47a; *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. at 73, 127 P.3d at 901.

The Apache Tribe requests that this Court grant certiorari and reverse the decision of the Arizona Supreme Court, but the Tribe does not persuasively advance any of the usual reasons for granting certiorari. *See* United States Supreme Court Rule 10. There is no allegation that there is a conflict between the decision of the Arizona Supreme Court and the decision of a court of last resort of another state or decision of a United States Court of Appeals. While the Tribe does argue that the decision of the Arizona Supreme Court is inconsistent with decisions of this Court, the Tribe's argument falls short of establishing that the Arizona Supreme Court's decision directly conflicts with any decision of this Court. At best, the Tribe is arguing that the Arizona Supreme Court misapplied decisions of this Court in a way that uniquely disadvantages the Apache Tribe, without any readily apparent impact on other potential litigants.

Even the ultimate impact on the Apache Tribe is not clear. The Apache Tribe is arguing a procedural error: that the Arizona Supreme Court is requiring the Apache Tribe to make arguments in federal court when it would prefer to have those arguments considered in state court. It is doubtful, however,

that the Apache Tribe would prevail regardless of the forum where its arguments are heard. The Tribe relies on the Restatement (Second) Judgments § 42(1)(e) for the proposition that the alleged inadequate representation by the United States is a defense to *res judicata*. *See* Petition at 8, 11, 23. But the United States is not the same as an ordinary private fiduciary. In a similar context, this Court refused to follow other provisions of the Restatement applicable to private trustees when determining whether a consent decree had preclusive effect on an Indian tribe. *See Nevada v. United States*, 463 U.S. 110, 140-41 (1983):

> The Court of Appeals . . . analogiz[ed] the Government's position to that of a trustee under the traditional law of trusts. But as we have indicated previously, we do not believe that this analogy from the world of private law may be bodily transposed to the present situation. The Court of Appeals went on to conclude: 'By representing the Tribe and the Project against the Orr Ditch defendants, the government compromised its duty of undivided loyalty to the Tribe. *See* Restatement (Second) of Trusts, supra, § 170 . . . As we previously intimated, we think the Court of Appeals' reasoning here runs aground because the Government is simply not in the position of a private litigant or a private party under traditional rules of common law or statute. Our cases make this plain in numerous areas of the law.

Moreover this Court has expressed a strong reluctance to overturn court decisions involving Indian tribes based on claims of inadequate representation, reasoning that the tribes'

remedies should be against the United States for breach of fiduciary duty. *See Arizona v. California*, 460 U.S. 605, 627-28 & n.20 (1983);[6] *Nevada v. United States*, 463 U.S. 110, 135 & n.14, p. 144 n.16 (1983);[7] *Nevada v. United States*, 463 U.S. at 145 (Brennan, Justice, concurring).[8]

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6. As a fiduciary, the United States had full authority to bring the Winters rights claims for the Indians and bind them in the litigation. . . . We find no merit in the Tribes' contention that the United States' representation of their interests was inadequate whether because of a claimed conflict of interests arising from the government's interest in securing water rights for other federal property, or otherwise. *** [T]he other cases relied upon by the dissent, involve suits brought in the Court of Claims by Indian Tribes seeking compensation from the United States for alleged takings of Indian lands. . . . If these cases are at all relevant, it is to suggest that in an appropriate case the Tribes' remedy for inadequate representation by the government may lie in the Court of Claims.

460 U.S. at 627-28 & n.20.

7. We also hold that the Tribe, whose interests were represented in Orr Ditch by the United States, can be bound by the Orr Ditch Decree. . . . We, of course, do not pass judgment on the quality of representation that the Tribe received. *** If, in carrying out their role as representative, the Government violated its obligations to the Tribe, then the Tribe's remedy is against the Government, not against third parties.

463 U.S. at 135 & n.14, p. 144 n.16.

8. If, however, the United States actually causes harm through a breach of its trust obligations the Indians should have a remedy against it. I join the Court's opinion on the understanding that it reaffirms that the Pyramid Lake Paiute Tribe has a remedy against the United States for

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Finally, the Apache Tribe's argument rests on the untested supposition that if the attorneys for the United States had litigated, the Tribe would have received a better result than the 1935 Decree. The supposition is speculative. At least until this Court's decision in *Arizona v. California*, 373 U.S. 546 (1963), the extent and measure of reserved rights had not yet been fully developed and litigants and courts struggled with quantification issues. *See* Charles J. Meyers, *The Colorado River*, 17. Stan. L. Rev. 1, 70 (1966) ("With no guidance on the measurement of Indian rights from the Supreme Court, the lower federal courts have been struggling with the problem of quantification since *Winters*."); *Fort Mohave Tribe v. United States*, 32 Fed.Cl. 29, 35 (1994).[9]

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> the breach of duty that the United States has admitted. In the final analysis, our decision today is that thousands of small farmers in northwestern Nevada can rely on specific promises made to their forebears two and three generations ago, and solemnized in a judicial decree, despite strong claims on the part of the Pyramid Lake Paiutes. . . [T]he law can and should fix responsibility for loss and destruction that should have been avoided, and it can and should require that those whose rights are appropriated for the benefit of others receive appropriate compensation.

9. When evaluating plaintiffs' claim of breach of trust, however, it is crucial to evaluate the government's actions at the time the actions were taken rather than with the benefit of the crisp vision of hindsight. When the United States was litigating *Arizona I*, not only did it lack precedent in which experts applied PIA standards, but it also lacked the benefit of an established PIA standard. As described above, *Winters* merely granted Indian tribes water rights sufficient to carry out the purposes for which their reservations were created and did not explain how to translate that standard into a specific quantity of water rights.

It may not be proper to fault attorneys working in the late 1920s and early 1930s for betting on the security of a settlement instead of risking the decision by a judge in what was still a developing area of the law.

Regardless of the merits of the underlying argument, however, the Arizona Supreme Court was correct when it ruled that issues concerning inadequate representation should be raised by direct attack in the District Court that entered the Decree, not by a collateral attack in state court. The decision of the Arizona Supreme Court is particularly compelling when applied to this Decree. The underlying litigation was "instituted at the suggestion of the Secretary of the Interior and by direction and authority of the Attorney General." *See* Amended Complaint, Appendix 48 to the Phelps Dodge Corporation's Conditional Cross-Petition for Writ of Certiorari, ¶ 3. The stipulation for entry of Decree was signed by Secretary of Interior Harold L. Ickes and Attorney General Homer Cummings. *See* Stipulation ("UVID App. A at 1a"). The District Court Judge, before signing the Decree, was required to decide that it was fair and reasonable and did not violate the Constitution or undermine the rightful interests of third parties. *See Stovall v. City of Cocoa, Fla.* 117 F.3d 1238, 1242 (11th Cir. 1997) ("The district court could have — indeed, should have — rejected the consent decree if it determined the decree was unreasonable, unfair, or, as the City alleges, unconstitutional"); *Kasper v. Board of Election Com'rs of the City of Chicago*, 814 F.2d 332, 338 (7th Cir. 1987) (similar); *United States v. City of Miami, Florida*, 664 F.2d 435, 440-41 (5th Cir. 1981) (en banc) (similar).[10]

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10. *See also* 1B *Moore's Federal Practice* 0.409(5), at 1030 (2d ed. 1980) ("[T]he judgment is not an inter partes contract; the court is not properly a recorder of contracts, but is an organ of government constituted to make judicial decisions and when it has rendered a consent judgment it has made an adjudication.")

Accordingly, a decision that the Decree should be overturned based on inadequate representation will also require a determination that the United States District Court judge, the Secretary of Interior, and the Attorney General all did not do their jobs.[11] If decisions of a District Court Judge, the Secretary of Interior, and the Attorney General regarding the entry of a decree should be subject to later judicial review, certainly it is appropriate for the courts to require that the review be initially sought in the United States District Court where the decree was entered. As the Arizona Supreme Court pointed out, the Apache Tribe elected not to seek that review in District Court, but instead

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11. Both the Attorney General and the Secretary of Interior, as members of the executive branch, are entitled to deference based on comity. *See Calderon v. Thompson*, 523 U.S. 538, 551 (1998) ("Comity is not limited to the judicial branch of a state government. . . . the Court of Appeals should have considered as well the more vital interests of California's executive branch."); *cf.* F. Cohen, *Handbook of Federal Indian Law* (1988), § 8 p. 101 ("The acts of the Secretary of Interior with respect to Indian affairs are "presumed to be the acts of the President."); *Heckman v. United States*, 224 U.S. 413, 444-445 (1912)

> There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents . . . nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.

See also In re: The Application For Water Rights of United States, 101 P.3d 1072, 1080 (Colo. 2004) ("The scope of the waiver of sovereign immunity under the McCarran Amendment is not so broad that it allows state courts to evaluate or adjudicate the federal agency decision making processes leading the United States to make a particular water application in a given case.")

chose the state trial court. *See* Pet. App. at 44a-45a; *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. at 73, 127 P.3d at 900.

B. This Court's decision in Arizona v. San Carlos Apache Tribe does not require the state courts to determine the United States inadequately represented the Tribe in District Court.

The Tribe argues that the decision by the Arizona Supreme Court, requiring it to challenge the inadequacy of the representation of the Tribe in the court that entered the Decree, misapplied principles established in *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983). *See* Petition at 17-23. *Arizona v. San Carlos*, however, is factually distinct. In that case, the San Carlos Apache Tribe and other Indian tribes instituted new litigation in federal court to determine their respective water rights rather than permit those rights to be determined in the general adjudications that were already pending in state court pursuant to the McCarran Amendment. 463 U.S. at 557. This Court stayed the proceedings in federal court based on *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), in part to further the judicial bias against "piecemeal litigation." *See* 463 U.S. at 569-71. By contrast, in this case, the District Court that entered the Globe Equity Decree had retained jurisdiction over the Decree. *See* Decree at 113, Petitioner's Supp. App. at 225. Pursuant to its continuing jurisdiction, the District Court has considered and resolved numerous disputes among the parties to the Decree.[12]

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12. *See, e.g., United States v. Gila Valley Irrigation District*, 117 F.3d 425 (9th Cir. 1997); *United States v. Gila Valley Irrigation District*, 31 F.3d 1428 (9th Cir. 1994); *United States v. Gila Valley*

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The Apache Tribe intervened in the District Court case to represent its own interests, but did not seek to attack the decree itself or challenge the previous adequacy of the representation of the Tribe by the United States. *See* Pet. App. at 44a-45a; *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. at 72, 127 P.3d at 900. After the Apache Tribe's intervention, at the request of the Tribe and other parties, the District Court has enforced numerous provisions of the Decree, resulting in five reported decisions and many other unreported decisions and orders.[13] Even when finding that a particular provision of the Decree was harsh as applied to the Apache Tribe, the District Court still enforced the Decree, holding that "the Decree was intended as a complete statement of the rights of the various parties to the waters of the Gila River." *United States v. Gila Valley Irrigation District*, 804 F. Supp. 1, 10 (D. Ariz. 1992). Certainly, if "piecemeal litigation" is to

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Irrigation District, 961 F.2d 1432 (9th Cir. 1992); *United States v. Gila Valley Irrigation District*, 959 F.2d 242 (9th Cir. 1992) (unpublished); *United States v. Gila Valley Irrigation District*, 454 F.2d 219 (9th Cir. 1972); *Gila Valley Irrigation District v. United States*, 118 F.2d 507 (9th Cir. 1941); *Brooks v. United States*, 119 F.2d 636 (9th Cir. 1941); *United States v. Gila Valley Irrigation District*, 920 F. Supp. 1444 (D. Ariz. 1996); and *United States v. Gila Valley Irrigation District*, 804 F. Supp. 1. (D. Ariz. 1992).

13. *See United States v. Gila Valley Irrigation District*, 117 F.3d 425 (9th Cir. 1997); *United States v. Gila Valley Irrigation District*, 31 F.3d 1428 (9th Cir. 1994); *United States v. Gila Valley Irrigation District*, 961 F.2d 1432 (9th Cir. 1992); *United States v. Gila Valley Irrigation District*, 920 F. Supp. 1444 (D. Ariz. 1996); and *United States v. Gila Valley Irrigation District*, 804 F. Supp. 1. (D. Ariz. 1992); Memorandum and Order, dated September 30, 1993, UVID Appendix at 19a.

be avoided, the Apache Tribe, after having repeatedly sought and obtained enforcement of the Decree in federal court, should not now be permitted to collaterally attack that same Decree in state court. As the Arizona Supreme Court reasoned, if the Apache Tribe wanted to challenge the validity of the Decree, it should have done so directly in the federal court that entered the Decree. *See* Fed. R. Civ. P. 60(b).

The Apache Tribe argues, however, that it does not intend to "upset or invalidate" the Globe Equity Decree. *See* Petition at 9 n.15. The argument is nonsensical. The Decree adjudicates thousands of water rights to the mainstem of the Gila River. *See* Decree 14-85, Petitioner's Supp. App. 126-197. The Apache Tribe is claiming more than 643,026 acre-feet of water from the mainstem, which is almost three times all the decreed rights for *all* the parties in Hidalgo County, New Mexico, and Graham and Greenlee Counties in Arizona and more than all the Gila River water that entered the Safford Valley during the year 2005, a very wet year. *See* Petition at 6 n.10; *compare* Decree at 14-85, Petitioner's Supp. App. 126-198.[14] If the Tribe is successful in its claim, the Decree and all the decisions obtained by the Tribe and other parties interpreting the Decree will be meaningless.

Finally, presumably attempting to show that the decision below will have impacts that extend beyond the Apache Tribe

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14. *See* the *Annual Report on the Distributions of Waters of the Gila River, by the Water Commissioner to the United States District Court for the District of Arizona* (2005), *http://www.gilawater.org/annual.pdf*, Plate 29-9 (summarizing all diversion rights under the Decree) and Plate 37 (showing flows of water in the Gila River at the head of the Safford Valley). The portion of the San Carlos Apache Reservation adjacent to the Gila River is in the Safford Valley, downstream from the gauging station at the head of the Valley and upstream from the Gila River's confluence with the San Carlos River.

and the facts of this case, the Apache Tribe argues that the Arizona Supreme Court's decision will mean that any Indian tribe, which in some prior proceeding has been represented by the United States, will be barred by principles of *res judicata* from raising claims that could have been raised in the prior proceeding. *See* Petition at 21-22. It is true that normal principles of *res judicata* bar a party and its privies from litigating claims that could have been litigated in a previous proceeding that resulted in a judgment. *See Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 477 (1998). But this case is unique. Here, the federal court that entered the prior decree has retained jurisdiction and continues to actively administer and enforce the decree. Yet, at the same time the federal court was enforcing the decree, the state courts were addressing whether the decree should be given preclusive effect. It is highly unlikely that similar facts will be encountered again. Contrary to the Tribe's argument, even assuming the decision by the Arizona Supreme Court is wrong (which it is not), at worst, the decision was a misapplication of law to a unique set of facts, not justifying review by this Court. *See* United States Supreme Court Rule 10.[15]

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15. Only two other tribes are known to have faced somewhat similar circumstances, but neither will be litigating this issue. The Gila River Indian Community, which also has claims under the Decree, has settled its water disputes. *See Arizona Water Settlements Act of 2004*, Pub. L. No. 108-451, Titles II & III, 118 Stat. 3478, 3499, 3536. The Orr Ditch Decree, entered about the same time as this Decree, has already been found by this Court to have preclusive effect on the claims for the Pyramid Lake Indian Reservation, despite allegations that the United States had inadequately represented the interests of the Reservation. *See Nevada v. United States*, 463 U.S. at 145.

C. The decision below does not violate the due process and equal protection provisions of the fifth and fourteenth amendments to the Constitution.

The Apache Tribe argues that the decision below deprived it of its rights to due process and equal protection. *See* Petition at 23-27. The Tribe does not allege that there is any conflict between the decision of the Arizona Supreme Court and the decision of a court of last resort of another state or decision of a United States Court of Appeals and the Tribe does not allege a direct conflict with any decision of this Court. Instead, the Tribe argues that well-established general propositions of law were misapplied.

The Tribe's due process argument is that it has never had its "day in court" to argue its defense of inadequate representation to *res judicata. Id.* The Tribe does not cite to any authority, however, that due process entitles it to any particular forum. Indeed, there is nothing about the decision below that would prevent the Tribe from making a direct attack on the Decree. *See Orion Tire Corp. v. Goodyear Tire & Rubber Co.*, 268 F.3d 1133, 1135-36 (9th Cir. 2001); *Plotner v. AT&T Corp.*, 224 F.3d 1161, 1170 (10th Cir. 2000); *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985). It may be that the District Court, after having heard and decided numerous arguments of the Tribe regarding the enforcement of the Decree, might hold that the Tribe has waived any right to now upset the Decree. Such a ruling, however, would not be based on the decision of the Arizona Supreme Court below; instead it would be based on the Apache Tribe's decision to

intervene in the federal litigation without making a direct attack upon the Decree.[16]

The Tribe's equal protection argument is based on two claims. First, the Tribe claims that the trial court improperly invited non-Indian parties to assert that the Decree had preclusive effect on the Apache Tribe "with no risk to their own claims." *See* Petition at 29-30. The Apache Tribe is wrong. At the same time that the trial court heard motions for summary judgment regarding the preclusive effect of the Decree on the Apache Tribe, it also heard similar motions regarding its preclusive effect on the Gila Valley Irrigation District and the Franklin Irrigation District. *See* Order dated April 4, 2002, UVID App. B at 17a-18a. The court found that the Decree had preclusive effect on the Irrigation Districts, as well as on the Apache Tribe. *See* Order dated May 17, 2002, Pet. App. at 64a-65a.

Second, the Tribe claims that non-Indian farmers, towns, and private companies, unlike the Tribe, are free to make additional claims to the Gila River for lands not covered by the Decree. *See* Petition at 26-27. Since the Tribe does not cite to any fact or authority in support of this claim, it should be ignored. Moreover, the decision of the state trial court that barred the Apache Tribe from making additional claims to the Gila River also barred the Upper Valley Irrigation Districts from making additional claims to the River. *See* Orders dated April 4, 2002, UVID App. B, and May 17, 2002, Pet. App. at 64a-65a. Contrary

16. Even if the Tribe has waived its rights to directly attack the Decree, it still may have a remedy for inadequate representation. *See Arizona v. California*, 460 U.S. at 627-28 n.20 ("[I]n an appropriate case the Tribes' remedy for inadequate representation by the government may lie in the Court of Claims."); *Nevada v. United States*, 463 U.S. at 144 n.16 ("If, in carrying out their role as representative, the Government violated its obligations to the Tribe, then the Tribe's remedy is against the Government, not against third parties.")

to the suggestion by the Tribe, the *res judicata* decision by the trial court was not based on the ethnicity of the claimants, instead the Court ruled that parties whose rights had been adjudicated by the Globe Equity Decree were precluded regardless of whether they were non-Indian members of the Upper Valley Irrigation Districts or were Indian tribes represented by the United States. If other persons and entities, not precluded by the Globe Equity Decree, are making additional demands on the Gila River, the Apache Tribe, like any other party, may challenge those demands in the General Adjudication.

Finally, the Apache Tribe argues that the General Adjudication in Arizona has been a failure, has taken too long, and suggests that the Tribe has not been treated fairly in the Adjudication, perhaps implicating constitutional requirements of due process and equal protection. *See* Petition at 6, 16, 18 & n.28, 21, 26, 27, 30. In support of its argument, the Tribe cites to allegedly prejudicial state legislation that was passed while the General Adjudication was proceeding in the state courts. *See* Petition at 27-30. After the legislation was passed, however, the Apache Tribe challenged the legislation and both the state trial court and the Arizona Supreme Court, on interlocutory appeal, ruled that most of the legislation was unconstitutional. *See San Carlos Apache Tribe, et al. v. Superior Court of Arizona*, 193 Ariz. 195, 972 P.2d 179 (1999). The decision in *San Carlos Apache Tribe* is just one of various interlocutory appeals in the General Adjudication where the Arizona Supreme Court has ruled in favor of the Apache Tribe and other federal parties. *See In re the General Adjudication of All Rights to Use Water In the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001) (Accepting the Apache Tribe's and other Indian tribes' arguments that the tribes' reserved water rights are not limited by the PIA standard); *In re the General Adjudication of All Rights to Use Water In the Gila River System and Source*, 198 Ariz. 330, 9

P.3d 1069 (2000) (Broadly interpreting the meaning of "subflow" as argued by the Apache Tribe and other federal parties); *In re the General Adjudication of All Rights to Use Water In the Gila River System and Source*, 195 Ariz. 411, 418-19, 989 P.2d 739, 746-47 (1999). (Ruling that Indian tribes have a reserved right to groundwater). Contrary to the Tribe's argument, and the Tribe's one loss (in the decision below) and its many victories (in earlier decisions) do not demonstrate that the General Adjudication in Arizona has been less than adequate to protect the rights of Indian tribes, including those of the Apache Tribe.[17]

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17. The Tribe's criticism of the General Adjudication also ignores the 1992 settlement of some of its own claims and the significant benefits other Arizona Indian tribes have received by settlement. *See, e.g.*, Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549; Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, Title IV, 104 Stat. 4469, 4480; Arizona Water Settlements Act of 2004, Pub. L. No. 108-451, Titles II & III, 118 Stat. 3478, 3499, 3536 (regarding both the Gila River Indian Community and the Tohono O'odam Nation). The Tribe argues that the trial court in the General Adjudication has improperly chosen to adjudicate Indian water claims before other water claims. *See* Petition at 27 n. 34. The Indian water claims are very large and many have priority claims that are senior to most, if not all, private water rights. Surely, there are non-discriminatory administrative explanations for the trial court's choice to litigate Indian water claims first. Moreover, the initial focus on Indian water rights may have resulted in at least some of the settlements of Indian water rights claims. The Tribe is correct, however, when it argues that the General Adjudication has taken longer than some persons anticipated. Undoubtedly, a large portion of the delay is attributable to both the settlements and the numerous interlocutory appeals.

CONCLUSION

The decision by the Arizona Supreme Court was correct. But even if it were wrongly decided, there is no allegation that there is a conflict between the decision of the Arizona Supreme Court and the decision of a court of last resort of another state or decision of a United States Court of Appeals. Nor does the Tribe show that the decision of the Arizona Supreme Court directly conflicts with decisions of this Court. At most, the Apache Tribe argues that the Arizona Supreme Court misapplied well-established principles of law. The Upper Valley Irrigation Districts request that the Apache Tribe's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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Counsel of Record
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Attorneys for Respondents
Gila Valley Irrigation District
and Franklin Irrigation District

APPENDIX

APPENDIX A — STIPULATION FOR AND CONSENT TO THE ENTRY OF A FINAL DECREE FILED JUNE 29, 1935

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN THE CASE OF
UNITED STATES OF AMERICA V. GILA VALLEY
IRRIGATION DISTRICT, ET AL.

Come now the parties hereto, either in person or by their solicitors, and inform the Court that they have reached a settlement of the issues in this cause and have adjusted and settled their respective claims as between each other; that they have set up in the within and foregoing decree the respective rights of all parties hereto, and request the Court to adopt said decree as its finding herein and that it be entered as its final decree in this cause, settling and adjudicating the rights of the parties hereto.

For the United States of America

HOMER CUMMINGS,

The Attorney General

HAROLD L. ICKES,

The Secretary of the Interior

CLIFTON MATHEWS, F. E. FLYNN,

Clifton Mathews, Esq. June 24, 1935

United States Attorney,

Solicitors for the plaintiff, April 11, 1935

Appendix A

GERTRUDE M. CONVERSE,

Gertrude M. Converse, Solicitor for the San Carlos Irrigation and Drainage District, defendant heretofore ranged in interest, on the side of the plaintiff, and for the following other defendants:

Archie L. Bartlett; Fred W. Bassler; Maude M. Bassler; George W. Burgess; Louis Cathemer; Hazel A. Converse; Eldora Curry; Roland Curry; Salvadore S. Feliz; Juan S. Feliz; Manuel S. Feliz; Pedro S. Feliz; J. J. Fraser; F. P. Jamieson; J. C. Jamieson; W. O. Kidder; Edith Knappenberger; Frank Knappenberger; Ed Lacy; Elizabeth M. Martin; Rolland H. Moorehouse; L. S. Nafziger; M. N. Nafziger; Leon M. Nowell; George W. Smith; C. H. Southworth; Dugald Stewart; James R. Treat; Louise M. Trekell; and Don A. Trekell

KIBBEY. BENNETT, GUST, SMITH AND ROSENFELD

by J. L. GM, Kibbey, Bennett, Gust, Smith and Rosenfeld, Solicitors for the following defendants:

D. S. Adams; D. T. Adams; L. A. Adams; Joseph Alder; H. L. Alexander; Ephrian J, Allen; J. A. Allen; Johs W. Allen; Lewis Allen; S. E. Allen: A. A. Allred; Dells Allred; Edith H. Allred; Elden Allred; E, M, Alfred: J. N. Allred; Mrm. Bande Allred; Myron J. Allred; Phoebe Allred; Ruth Allred; Sesario Alvillar; H. J. Anderson; Tom Armada; Fannie Bailey; Mrs. V. M. Baker; M. B. Baker; George P. Ballard; Felix Bareda: Pablo Barela; Mrs. Sarah Barney; Ore. Sophia

Appendix A

Barney: W. T. Barnet'; E. D. Sarry; Innocents Bartolda; Savers Bartolda; Thomas Bntty; Walter Batty; C. M. Deal: J. H. Beal; Mrs. J. S. Deals: William N. Bombs; Frank V. Beers, Admin¬istrator of the Estate of R. H. Seers. deceased; Thomas H. Doll; W. A. Bennett; William Bigler: John Bilby; John Billingsley; Hyrax Bingham; J. H. Bingham; Lester Bingham: R. William Bingham, Warren Bingham; W. R. Bingham; D. W. Birdoo; Mrs. Jobs J. Birdno; Mary Lorraine Birdno; E. W. Black: Edsil Blain; W. M. Blair: Ben Blake; Rd Blake; 1. B. Blake; Mrs. Thomas Blake; T. F. Boggs; W, P. Bollinger; Charles Boots; C. B. Borenl William Boron; H. G. Boyle; Mrs. Artis Branam; L. B. Brava*; Wallace Branch; Brown Canal Company; Crate D. Brown; Jaared T. Brown; L. J. Brown. Jr.; William Brunson; Adelaide M. Bryce: A. J. Bryce; David J. Bryce; E. P. Bryce; C. A. Bryce; Haber B. Bryce; J. W. Bryce; R, A. Bryce; Mrs. Sarah Bryce: W. C. Bryce; William S. Bryce; E. 0. Bullard; Charles Burrell; George Burrell; Manuel Burrell; T. D. Burton; J: D. Busby; Mary Butler; W. F. Butler. Jr.; Edward Carpenter; Frank Carpenter; John Carpenter; tester Carpenter; William Carpenter; Mrs. ions Carrasco; V. Carrasco Antone Carrson; Albert Carter; Alof P. Carter, Administrator of the Estate of E. L. Carter, Deceased; W. A. Carter. Sr., Ethel B. Carter; W. R. Chambers; J. A. Chapman, W. W. Chapman; Pablo Chavarria; P. Chendilla; D. W. Cheney; lira. A. W. Chesley; J. B. Chemter-. H. R. Chiarson; Antone Christensen, Victor Christenson; Citizens Bank; Edward M. Claridge; Charles S. Clark; H. J. Clark; W. A. Clark; H. S. Clarke; Aeshel Clifford; Elijah Cliffnrd; Henry Clifford, Sr.; L. A. Clifford; W. H. Clifford; B. F. Cleft; Benjamin R. Cliff, Administrator of the Estate of Joseph Cluff, deceassd; Mrs. J. E. Cluf!; John Cluff; Evans Coleman; H. L. Colvin, John D. Colvin:

Appendix A

Colvin-Jones Canal Company; C. S. Conway; C. S. Conway. Administrator of the Estate of F. W. Haym, deceased; C. L. Coombs; George Coombs, N. V. Coombs; lasso Combs; N. E. Combm; Willies Coombs: Grady Copped=.; James Corder, John C. Cnpper; Henry Crabbe; Mrs. W. R. Craig: 0.•R. Crandall; R. D. Crandall; 0. L. Crawford, H. W. Crockett, W. W. Crockett; A. J. Curtis; Ammon Curtis; Curtis Canal Company: Claws Curtis; Don Curtis; Mrs. Elizabeth Curtis; Leery Adelbert Curtis; Eugene Curtis; Ezra Curtis; Ore. Frank Curtis; H. M: Curtis; Mrs. Virginia Curtis; L. C. Cutler; Charles E. Dallas; Mrs. Julia Daly; Willis R. May; Mrs. Hester Damron: Johs ft. Davidson. A. B. Docker; Z. B. Decker; Etta 0. Deller: Mrs. Honry Dial; Guy Dixon, A. J. Dodge; Dodge-Nevada Canal "any; David Dodge; Mrs. Layman Dodge; Thomas Dodge; J. M. Dominges; Ciaro Domingues: Mrs. Lily Duke; J. W. Earvin; Banjul* Echolm; Ramcido Elias; H. B. Elledge; Davidsel Ellsworth, Ernest Ellsworth. Premix Ellsworth; William Ellsworth: Mrs. Gharlotte F. Elmer; J. H. Elmer; Mrs.Sarah S. floor; Hart D. Empie; Miguel Encinas; Catalina Entzsinger; Mrs. Belle Epley; John C. Epley; P. tatrads; Austin Evans; George C. Evans, E. C. Eyring; Amadeo Fajardo; C. E. Farley; J: A. Farley; Luther Farley; A. M. Farmer; F. A. Farrell;, C. J. Farrington: J. W. Felshaw; M. P. Ferguson; F. M. Farrell; C. E. Ferrin; Ether S. Ferrin; Robert Ferrin; W. M. Ferrin; Jose Figuerroa; J. H. Fine; Seth P. Fletcher; Elias Fieree: More. Floyd; Joseph E. Follett; 1. A. Follett; L. L. Follett; W. L. Follett, George Toote; Orson F. Foote; W. R. Foote: Fort Thomas Consolidated Canal Company; Hugh Foster; John H. Fuster; J. A. Foster; Karl Foster; Fourness Canal Company; Mrs. Clara Poorness; J. L. Foutz; Augustin Franco; Pedro France: J. L. Freeman; M. S. Freeman; Alas Freestone;

Appendix A

Charles E. Freestone; R. L. Freestone; P. H. Freudenthal; Archie Fuller; Lawrence Fuller; Thomas F. Fuller; William Fuller: Millard Fyffs; E. Gallego; Casimiro Garcia; 0. Garcia; Jeeus Carcis; Jose B. Garcia; Juan Caroia; Marajilda Caroia; Rafael Garcia: Tomas Garoia; Victoriano Garoia; Thomas Gardner. Ramon Causa; Fernando Cervantez; Charles Gietz; Gila Valley Irrigaticn District; Albert Gillespie; Edward L. Gillespie; Jaws Gillespie: Shell Gillespie; William H. Gillespie; Forrest Gilliland; J. R. Gillmore; J. R. Goldlng; Mrs. S. 0, Gonzales: Mrs. Francis Goodman; George A. Gourley; Graham Canal Company; Mattie Graham; Epitacio Granillo; J. L. green Reece b. Green; J. W. Greenhalgh; R. H. Greenhalgh; Christine Grijalva; J. M. Grijalva; Merejildo Grijalva; C. J. Grover; Hugh C. Hammen; E. E. Hancock; Ira Hancock; Jesse A. Hancock; H. B. Hares; A. Harper; John H. Harper; Delbert Hatch: George L. Hatch; 0. J. Hatch: Elijah Hawkins; J. N. Hawkins; C. D. Haynie; L. B. Head; George R. Healy; C. M. Hendricks: Sam Henry; Spence C. Heywood; John Nicks; C. H. Higgins; Heber M. Higgins; Mrs. Clara Hinton, Calvin Hooker; F. H. Holiday; Soott Holladay; S. N. Holman; J. N. Holyoak; William H. Holyoak; Mrs. Arthusa Hoope.; Bert Hoopes; H. E. Hoop..; John L. Hoopes; George A. Hoops: C. D. Householder; E. D. Howard; J. M. Howard; Joseph Howard; S. D. Howard; Almera Hubbard; Thomas H. Hundley. A. G. Hunt; Sarah A. Hunt; Mrs. S. J. Hunter; Mrs. W. E. Irwin; George P. Jacobson; Martin Jacobson. P. J. Jacobson; S. L. Jenkins; S. P. Jenkins; James Jensen; David Johns; Charles P. Johns; D. L. Johns; J. C. Johnm; L. A. Johnm; W. A. Johns; Mrm. William Johns; D. C. Johnson: Norman J. Johnson; P. Johnson; Orlando Jolly; James E. Jones; David Jurado; Leo Keiffer; P. M. Kelly; A. J. Kempton; Asa B. Kempton; Bell Kempton,

Appendix A

Administratrix of the Estate of A. N. Bryce, deceased; Calvin I. Kempton; Fred Kempton; Heber Kempton;. Ire N. Kempton; Mrs. Margaret R. Kempton; R. H. Kempton; Donald Kennedy; J. D. Kennison; C[illegible]rles Kerby; George Killian; Heber C. Kimball: Spencer Kimball; Thomas S. Kimball; F. E. Kirkpatrick; Charles Kruger. Cora Kruger; E. M. Lambson; A, 0. Lamoreaux; Guy W. Lamoreaux; R. D. Lamoreaux; Beatrice Larson; Charles S. Larson; 0. 0. Larson; Eral Larson; Ephriam Larson; James M. Larson; Joe Larson; Lehi Larson, Sr., Maroni Larson. Mildred B. Lamn; Mrs. Olives Larson; Orvil Larson-. William Larson; Alex Layton: Charles M, Layton; 0. M. Layton, Jr.; H. W. Layton: Leslie W. Layton; M. Y. Layton; Oscar 0. Layton: R. G. Layton, Jr.; Roy A. Layton; Any T. Leavitt, Claude M. Lee: J. D. Lee; J. Y. Lee; Marion Lee; Mrs. W. A. Lewis; Mrs. Nisia Lindsay, Al Lines; Joseph H. Liars; Milton Lines; W. A. Lines; Charles Luster: R. L. McAllister; D. C. McBride: Ether McBride; James A. McBride; Laura McBride; P. H. McBride; P. H. McBride, Jr.; W. E. McBride; Mrs. Laura MaCullom; C. J. McElroy: Martha McElroy; A. F. McEuen. E. W. McEuen; M. P. McEuen; Virgil R. McEuen, Thomas McGuire; A. 0. Mack; 0. M. Mack; Henry H, Mack; J. A. Mack; J. H. Mack; William S. Mack; Robert Mackay. Abran Madrid; James Mallon, W. J. Mallon; Angus Malay; 0. B, Malay; M. D. Malay. Clark Mangum, S. Marcus; S. S. Marshall; W. 0. Marshall; Clarence Martin; J. B. Martin; J. S. Martin; Mrs. W. F, Martin; Juan Martinez, C. V. Massey, J. T. Massey: Mrs. L. A. Massey; George A. Mathews. Simon Mathews; G. A. Matthews; Mrs. Chloe Matthews: D. H. Matthew.; Eliza Matthews. Jane L. Mattice; John W. Mattice; Lewis P. Mattice; BenMauer; Kimball Urban, Mrs. T. M. Medhurmt; Miguel Mean. Manual Mender; Damasio 0. Meraz; Gerald

Appendix A

Merrill; H. M. Merrill; Martha A. Merrill; P. C. Merrill; P, 0, Merrill. Administrator at the Estate of Joe Pensyl. deceased; P. M, Merrill; $. A, Merrill; Wiles Messinger. Louis Michelena; Mrs. M. Michelena; Mrs. J. S. Miles; G. R. Miller; Sisto Molino; Francisco Master; Jesus Montez; Montezuma Canal Company; E. E. Montierth; George Montierth; Leslie Montierth; M. 0. Montierth; Wendell Montierth; Edward Moody: Edwin Moody; J. M. Moody; Winford Moody; J. R. Moore; Jose Morales; Mrs. Belle Morris; Cicero Morris; E. M. Morris; Frank Morris; George Albert Morris; John W. Morris; Robert Morris; Williaw Morris; M. Mortensen; C. N. Motes; D. T. Motes; Ernest Votes; P. L. Motes; Anna N. Votas; Joseph Motes; J. R. Naillon; Aran T. Nelson; L, A. Nelson; W. L. Nelson; H. L. Norton, Jr.; H. L. Morton, Sr.; J. E. Norton; P: A. Norton; S. N. Norton; William R. Norton; John Multon; J. H. Nuttall: Braulio Ochoba: Elam Olsen; Victorino Olivas; W. Ollerton; Oscar Olson; H. Ortiz; Claim L. Overly: J. 'T. Ovens, Jr., 0. 8. Owens; Mrs. C. R. Pace; Mrs. Isabelle Pace; W. W. Pace; Asa Packer; X, X. Packer: Joaquin Padilla; Mrs. Marcelina Padilla; C. Palmer; I. J. Palmer: lasso 0. Palmer; J. I. Palmer; Lee L. Palmer: Mrs. Nancy Palmer; Ray Palmer; Van D. Palmer; George 0. Peok: William A. Peck; Callate B. Pool; Mabel Perkins: Juvenal Perolas. Administrator of the Estate, of Damas Do Leon, deceased; Maranda Perkins, Jacob Peters; Alms Peterson; P. 0. Peterson; Wilfred Peterson; E. C. Phillips; Jesse 0. Phillips; Rodger Phillips: W. A. Pitt; Den T. Platt; W. E. Platt; E. M. Plumb; Henry E. Plumh; J. M. Plumb; S. V. Pollack; A. T. Pollock; James H. Porter; 3. V. Porter; W. A. Posy; W. A. Posy, Administrator of the Estate of Orson Ellictt,. deceased; D. T. Preston; M. F. Premton; W. P. Preston, W. J. Preston; Harriett Pulsipher: J. E. Pulsipher; Jesse B. Quinn; Anastacio

Appendix A

Quiroz; D. Raper; B. 0. Rapier; Miles Roay; Robert 8. Reed; Sarah C. Read; Mrs. W. R. Rood: T. J. Rex; Carlysle Reynolds; S. Z, Reynolds; J. F. Rhinehart; W. 0. Richards, George F. Richards; Gilbert Richardson. Rebecca Richardson; Sarah L. Richardson: Lito Rios; W. H. Roach; I. P. Robinson; Charles Rogers; David Rogers, H. P. Rogers: Joseph Rogers, Mrs. Louisa Rogers; A. Rohner: C. N. Rose; Niels J. Roseberry; Espedion Sadilla; C. B. Sale; Ethloa Saline; John Saline, Roy Saline; R. 0. Saline; Jose Samora: Abel Sanchez; Adiel Sanchez: Daniel Sanchez; Eliseo Sanchez: P. Sanchez, Isian Sanchez: Manuel Sanchez; D. R. Sanders; George Sanders; San Jose Canal Company; Clarence Scarlett: J. W. N. Scarlett; L. B. Scarlett: W. F. Scarlett; J. E. Schurtz; S. E. 0. Sears; Andrena Serna; Santos Same; Mrs. John Shields; A. J. Shifflet; J. S. Shifflet; R. R. Shipp; Francis M. Skinner; Maroni Skinner; Mrs. Martha Skinner; A. A. Smith; Mrs. 0. E, Smith; E. 0. Smith; H. L. Smith; J. M. Smith; Joanna Smith; L. W. Smith$ M. M, Smith; R. A. Smith. Sr.. Mrs. W. R. Smith; Mrs. J. B. Smithson; Smithville Canal Company; Charles F. Solomon; J. W. Sowell; S. A. Sowell; W. H. Spafford; W. D. Spear; Mrs. C. F. Stanley; Los N. Straton, Administrator of the Estate of Mrs. N. A. Bell, deceased; Albert Stephen, H. W. Stevenson; T. J. Steward: Pratt Stewart; John Stowe; Brigham Stowell: Mathews Stuart E. P, Stuermer; W. R Summers; D. V. A. Talley; Jamem M. Talley; J. T. Talley; 7. Hugh Talley; Van Talley; X. V. B. Talley: H. M. 'ate; P. R. Taylor; John E. Taylor; L. M. Taylor; Sarah Taylor; William 0. Taylor, William H. Taylor; P. H. Temple; S. B. Tenny, Jr.; Alva Thatcher;; L. N. Thatcher;: Tidwell Canal Company; Ida Tidwell John Tidwell and E. L. Tidwell, Jr., Administrators of the Estate of . L. Tidwell. deceased; George A. Todd; John

Appendix A

T. Traylor; W. 0. Tuttle; Frank H. Tyler; Oscar Tyler; William 0. Tyler, M. P. Tryon; Union Canal Company; H. 0. Usher; The Valley Bank & Trust Company; George Van Gaumig; Harry Van Order, Administrator of the Mate of Harry you Order, deceased; Antonio Vasquez; Jose Varalo; Souls Vials; Jose Villareal; W. R. Weddell; Jerome Walker; J. P. Walker; Charles Wasslas; Mrs. J. C. Pansies; Mattie Wamelee; William Pansies; Mrs. H. . Warnar; Henry A. Waters; Charles Watson; Lorenzo Watson; Fred Waughtal; Fred Webb; J. D. Webb, F. A. Webster, 0. F. Webster; William Webster, A. E. Weech; Adam Walker; Arthur Walker; C. D. Welker; J. A. Walker; R. A. Welker: Willard Walker; A. T. West; John West; B. F. Whitener, Sr.; B, F. Whitmer, Jr.: Mrs. Mildred Whitmer; Fred H. Wiener; W. W. Wild; A. A. Wilkins; Mrs. Charlotte Wilkins; Dan Williams; S. 0. Williams; lasso Williamson; T. L. Willis: J. V. Wilson; Mrs. Virgin R. Wilson; Mrs. W. A. Wilson; Alonzo Winsor; F. M. Woodward; R. A. Woolsey; Carrie B. Yett; and Dan Young; J. 0. Anglin: Pedro Bartolda; George A. Bigler; J. Bingham; Alof P. Carter; W. A. Carter, Jr.; Edgar N. Chesley; Church of Jesus Christ of Latter Day Saints; Benjamin P. Cluff, Administrator of the Estate' of Phoebe Cluff, deceased; W. D. Clef f; County of Graham, State of Arizona; Joseph Greenhalgh; Annie E. Hancock; M. M. Hancock; Zeb Ison; S. L. Johns; W. M. Kerby; A. 0. Lamoreaux, Jr.; Layton Corporation of the Church of Jesus Christ of Latter Day Saints; Art Lee; Henry Lines; George Clyde Mathews; Fred M. Mitchell; S. R. Hallion; Robert L. Mash; Lloyd Morton; Mrs. E. Olsen; Plea Corporation of the Church of Jesus Christ of Latter Day Saints; Plus Townsite; Mrs. Mattie Prina; Charles M. Pursley; George Reynolds; Mrs. Nancy Reynolds; David L. Ridgeway, Pedro Ruiz; Town of Safford; Safford School District No, 1. County

of Graham. State cf Arizona; School District No. 7, County of Graham, State of Arizona; School Dimtrict No. S. County of Graham, State of Arizona; School District No. 11. County of Graham, State of Arizona: School District No. 12. County of Graham. State of Arizona; School District No, 31, County of Graham, State of Arizona; George R. Shurtz; Townsite of Solomonville; Sunflower Canal Company: A. V. Tate, Town of Thatcher;; 0. F. Webster, Adminimtrator of the Estate of Thomas 0. Webster, deceased; Mrs. M. 0. White; Nephi Williams; Mrs. G. R. Young; and Emma B. Mellinger.

H. A. ELLIOTT, by A. R. LYNCH.
A. R. LYNCH,
H. A. Elliott and A. R. Lynch,
Solicitors for the following defendants:

J. L. Aker; Albert Canal Company; H. Albert; Mrs. Eliza Alexander; U. M. Allred; Hans Andermon; T. J. Anderson; R. H. Angle; T. W. Arnett. Albert L. Barber; E. 0. Barlow; J. R. Bearers, Florentino Billaba, Billingsley Extension canal Company; B.' F. Billingsley; Black L McCloskey Canal Company; W. Bleinstein; Silas Bradshaw; T. J. Branyon: C. M. Brooks; M. H. Brooks; R. W. Brooks; W. W. Brooks; J. H. Brown; S. A. Brown; T. W. Brown; Nellie K. Buck, Administratrix at the Estate of David Buck, deceased; J. C. Burleson; David F. Campbell, Jr.. Mary E. Campbell; J. E. Cardon; J. R. Carter; Mrs. Tom Carter; Ypolita Cosoarilla; Mrs. Maggie Cauthen; A. D. Cheatham, Betty Marsh Cheatham; E. V. Cheatham; I. M, Cheatham: Mary Ann Cheatham; S, C. Cheatham; J. K. Chilton; L. T. Christensen: R. F. Cloudt; M. A. Clouse; Jas. I. Coke; G. W. Collins; Columnar* Canal Company; Cooper Windham Canal

Appendix A

Company; Cosper & Windham Extension Canal Company; Alice H. Cooper; George H. Cooper; George H. Cosper, Jr.. Administrator of the Estate of George Cooper, deceased; Mussett Cooper: J. L. Crabtree: F. Y. Craig; W. C. Craufurd; J. H. Cready; F. M. Crockett; Mrs. M. J. Daniels;; E. 0. Davidson; David Davis; E. Day; Mrs. K. A. Does, Carl M. Donaldson; Duncan Canal Company; Duncan Union High School Dimtrict, Gus Duncan; Byron Cobalt; M. B. Echols; Joseph C. Elledge; R. E. Elledge; W. H. Elledge: 0. I. Bluer; John Evans. Amos F. Fearin; J. W. Foote; S. A, Poster; W. F. Foster; J. R. Fowler; Ernesta Francese, Administratrix of the Estate of Frank Francens, deceased; Franklin Irrigation District; R. H. Friestone; J. B. Fullerton; B. J. Gale; Mrs. E. A. Gale; I. B. Gale; Otto Gale; W. T. dale; James A. Gamble; F. N. Gault, W. A. Gill; Aubra Gilliland: J. M. Gilliland; R. C. Gilliland; Emil Girard; Trivio Gonzalez; H. Grady; John Hagan; H. B. Harris; K. L. Harris; Waide Harris; G, Lynn Hatch; J. L. Henderson; C. C. Heater; 0. L. Next; Floyd Hightower; C. F. Hill: J. W. Hill; Nellie R. Hooh; C. F. Houlihan; Rachel Jensen; R. T. Johns; Delbert Johnson; G. N. Johnson; Thcmas H. Johnson; F. W. Jones; John B. Jones; Mary Jane Jones; Parley P. Jonem; T. V. Jones; Willard E. Jones; Culver Kartchner; Mrs. S. L. Kemp: Richard Kirtland, A, T. Layton; A. N. Livvix; R. W. Lloyd; Anna H. Lint; Edward Lunt; George A. Lunt: 0. V. Lunt: Heaton Lunt; Omen Lunt; P. L. Lunt; Randall Lunt, Administrator of the Estate of Jamper Gale. deceased: R. H. Lunt; R. V. McCarty. J. F. McGrath; R. J. McLaren; M. J. Mabin; William Manske; C. C. Martin; J. A. Martin; J. H. Merrian, Executor of the Estate of Alto. K. Day, deceased; E. A. Merrill, Fenley F. Merrill: Orson A. Merrill; T. S. Merrill; R. K. Miller; James A. Mitchell; Meddle Canal Company; Robert M. Montgomery;

Appendix A

Theodore H, Moody; R. C. Moore, Hans Mortensen, Hiram K. Mortensen; J. Alfred Martens"; Peter Mortensen; W. T. Mosley; L. D. Moyers; L. 0. Moyers, W. F. Moyers. H. J. Nunn. T. A. Nunn; J. P. Oberholser: 0. 0. Odell, James Opts; Nancy 0. Pace; B. 0. Packer; C. C. Passmore; E. C. ram:; H. N. Payne.; Junius E. Payne; Lemlie B. Pays*; W. U. Phillpott; C. Pirtle; Mrs. M. E. Pittman; 0. W. Quinn; Margarete I. Ragsdale: Mane E. Ragsdale; Mrs. Ethel Rainbolt; Oscar Rainville; 0. Reyes, Ralph Richardson: Rebecca Richardson; L. Richardson; V. J. Richens. J. R. Rabbi; Ernest V. Romney; Eugene Romney; Julius Romney; F. E. Rose; W. T. Sanders; K. K. Schade; Frank Schultz; School District no. 2. County of Hidalgo, State of New Mexico; School District No. 7, County of Hidalgo, State of New Mexico; Andy Scott; Brooks Scott; Seoton Canal Company; R. Sexton; Deletes B. Shirk: Laura Short; Shriver Ditch Company; W. F. Shriver; Mrs. E. M. Simmons; Jesse B. Sissa; Sinclair Realty Company; Henry L. Smith; J. 0. Smith; V. Soto; Emma Spoon, Administratrix of the Estate of J. H. Spoon, doomed; A. L. Stewart; U. B. Stewart; Mrs. R. S. Stewart, George W. Stinson; W. P. Stover; Nicholas Saurez; Florence R. Swofford; Sunset Canal Company; Gharles Telles; Ban R. Tilley; W. D. Tucker; George Utter; Valley Canal Company; Virden Irrigation District; Peter Wahline; Alvin Warner; J. L. T. Batters; B.Whipple, West White; Joe Whittridge; W. W. Wilkey: 0. 1. Wilkins; E. J. Wilkins; J. 0. Wilkins; Lila Williams; Roy D. Williams; Mrs. T. M. Williamson; B. A. Wilson; George A. Wilson; Page S. Windham; N. C. Wright; George Wyatt; York Canal Company; and York Cattle Company; B. E. Bowers; J. I$. Payne, Trustee, Church of Jesus Christ of Latter Day Saints; A. C. Cruwell: M. H. Jensen; Milton N. Jensen; A. Keller; Maude Larsen; Mitchel McDonald; O. Mortensen;

Appendix A

Amanda Nations. N. D. Patton; 0. Q. Payne, Helen A. Payee; E. R. Richens; R. Richens; School District No. 27. County of Greenlee, State of Arizona; Nancy A. Smith; and E. Thyjeriod.

GIBBS AND GIBBS BY B. H.
Gibbs and Gibbs.
Solicitors for the defendant
T. H. B. Glasspie.

BAKER AND WHITNEY,
BY A. B. BAKER.
Baker and Whitney,

Solicitors for the defendant
Arizona Eastern Railroad Company.

H. S. NORVIEL,
N. S. Norviel, Esq.,
Solicitor for the following defendants: Catherine A. Norviel; Helen Slaughter. and H. D. Thornton,

FLOYD K. STAHL.
Floyd II. Stahl, Esq.,
Solicitor for the following defendants:
John H. Dennison; Pearl Dennison; Stowe Phelps; and O. 1. Purdy.

CHALMERS. FENNEMORE & NAIRN, BY H. B. FENNEMORE,
Chalmers, Fennemore and Nairn, Solicitors for the following defendants:

Appendix A

Nevada Consolidated Copper Company; Ray Consolidated Copper Company; and H. N. Fennemore and Kennecott Copper Corporation.

LEO J. HOLZWORTH
Lee J. Holzworth, Esq.,
Solicitor for the defendant Jomeph J. Anderson.

CHAS . H . REES,
Charles H. Reed, Esq.,
Solicitor for the following defendant:

Town of Florence.

0. J. BAUGHN,
Otis J. Baughn, Esq., for himself and as Solioitor for The following defendants:

Margaret P. Brown; Estate of Dorm M. Clark; Mire E. Doran: Llama J. Fulton. Wlliam G. Knight; Rafael 0. Larona, Lola LeBaron; H. H. McNeiL: Helen S. Sheafe; Charles M. Sheafer; James S. Sheafe.

ROBERT DENTON,
Robert Denton, Esq., for himself and as Solicitor for
the following defendants:
Florence-Casa Grande Water Users Association; Mark Twain Clemens; Sari 0. Clemens; Edith W. Clemens; Basal H. Clemans; Winnefred P. Clemans; J. Clemens, Jr.

Appendix A

SIDNEY SAPP,
Sydney Sapp, Esq. solicitor for the following defendants:
E. B. Newman, Administrator of the Estate of H. H. Scorce, deceased; S. V. Newman.
The following defendants sign for themselves individually,

ERNEST W. McFARLAND,
Ernest W. McFarland.

GRADY. HERRING,
Grady L. Herring.

CUM M BROCKWAY,
George M. Brockway

PETER OVERFIELD,
Peter Overfield.

Filed June 29, 1935.

J. LEE BAKER, Clerk,
United States District Court for the District of Arizona,
by WM. H. LOVELESS, Deputy Clerk.

APPENDIX B — MINUTE ORDER OF THE SUPERIOR COURT OF ARIZONA MARICOPA COUNTY FILED APRIL 4, 2002

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/04/2002

CLERK OF THE COURT
FORM V000

R. Luiszer
Deputy

HONORABLE EDDWARD BALLINGER, JR.

W-1, W-2, W-3, W-4 (Consolidated) W1-206

In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source

MINUTE ENTRY

To facilitate effective argument on the matters to be considered at the April 23, 2002 hearing to be held in this case, the following schedule will be in effect:

A. City of Safford's Motion to Strike Gila River Indian Community's Motion for Partial Summary Judgment (15 minutes).

1.	Movants	10 minutes
2.	Respondents	5 minutes

Appendix B

B. Motions Pertaining to the Preclusive Effect of the *Globe Equity No. 59* Decree on the San Carlos Apache Tribe (95 minutes).

1.	San Carlos Apache Tribe	18 minutes
2.	Gila River Indian Community	18 minutes
3.	United States	6 minutes
4.	City of Safford	9 minutes
5.	State of Arizona Agency Claimants	9 minutes
6.	Gila Valley Irrigation District and Franklin Irrigation District	9 minutes
7.	San Carlos Irrigation and Drainage District	9 minutes
8.	ASARCO, Incorporated	9 minutes
9.	Phelps Dodge Corporation	5 minutes
10.	Salt River Project	3 minutes

C. Motions Pertaining to the Preclusive Effect of the *Globe Equity No. 59* Decree on the Gila Valley Irrigation District and Franklin Irrigation District (60 minutes).

1.	Gila River Indian Community	10 minutes
2.	ASARCO, Incorporated	10 minutes
3.	Gila Valley Irrigation District and Franklin Irrigation District	10 minutes
4.	San Carlos Apache Tribe	10 minutes

5.	United States	4 minutes
6.	City of Safford	4 minutes
7.	San Carlos Irrigation and Drainage District	4 minutes
8.	Phelps Dodge Corporation	4 minutes
9.	State of Arizona Agency Claimants	4 minutes

Counsel may stipulate to alternative time allocations and submit those to the Court prior to commencement of arguments. It would be helpful if counsel for parties holding similar positions would agree among themselves as to who will present argument on each issue and the allocation of time. Parties on each issue will be allowed to reallocate their allotted time among themselves so that one party may utilize any remaining time not used or reserved by another party to that issue.

In addition, any party wishing to be heard must have filed motions papers relating to the matters to be heard, or a terse statement adopting the position of another party. Counsel shall present to the Court a written schedule of any suggested changes to the presentations prior to commencement of the arguments.

* * * *

A copy of this minutes entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 (Consolidated) mailing list dated February 7, 2002. This is also the Court-approved mailing list for Contested Case W1-206.

APPENDIX C — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA FILED SEPTEMBER 30, 1993

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GLOBE EQUITY NO. 59 (JCC)

UNITED STATES OF AMERICA,

Plaintiff,

and

GILA RIVER INDIAN COMMUNITY,

Plaintiff in Intervention,

and

SAN CARLOS APACHE TRIBE,

Plaintiff in Intervention,

v.

GILA VALLEY IRRIGATION DISTRICT, et al.,

Defendants.

Appendix C

MEMORANDUM AND ORDER

The matters now before the court consist primarily of the unresolved issues referred to the Rules Committee pursuant to the pretrial order entered in November, 1991 and the court's memorandum and order following the November, 1991 trial. *United States v. Gila Valley Irrigation District,* 804 F. Supp. 1 (D. Ariz. 1992). The court also requested briefing on various issues relating to the trial scheduled to commence November 7, 1994. A hearing on the matter was held in Tucson, Arizona from May 11-13, 1993.

The factual background to this dispute and the Gila River Decree generally is copiously reviewed elsewhere, and thus will not be repeated here. *See United States v. Gila Valley Irrigation District,* 454 F.2d 219 (9th Cir. 1972); *Gila Valley Irrigation District v. United States,,* 118 F.2d 507 (9th Cir. 1941); *United States v. Gila Valley Irrigation District, et al.,* 804 F. Supp. 1 (D. Ariz. 1992).

I. ADWR's Proposed Study

Issue — Should the court accept the offer made by the Arizona Department of Water Resources ("ADWR") to conduct a study free of charge to determine what lands in the Upper Valleys have been permanently removed from agricultural use, and if so, should its findings be binding on the Commissioner?

Appendix C

A. Background

Under Articles V and XI of the Consent Decree, the amount and rate of water that may be diverted by the Upper Valley Defendants ("UVDs") is tied to the number of acres "then being irrigated" by the UVDs. In other words, the Decree contemplates that the UVDs' water rights will depend on the amount of land in the upper valleys being used for farming purposes. Following the November, 1991 trial, the court observed:

> [t]he evidence at trial indicates that the water commissioner allows diversions without considering whether land is "then being irrigated." Rather, diversions are based simply on the decreed acreage.

United States v. Gila River Irrigation District. et al., 804 F. Supp. 1, 16 (D. Ariz. 1992). The court also noted that the failure to factor in the amount of land not being irrigated significantly increased the quantity of water allocated to the UVDS, to the detriment of the San Carlos Apache Tribe ("Apache Tribe"). To eliminate this unfairness, the court concluded that

> [t]here is little dispute that the commissioner should be directed to determine what acreage has been permanently removed from agricultural use. Clearly, such acreage includes lands now occupied by buildings, streets, roads, and parking lots within the districts. Such acreage, once identified,

> should then be subtracted from the total acreage from which diversions are calculated.

Id. at 16.

In accordance with this finding, the court directed the Rules Committee to formulate a method for determining lands permanently removed from agricultural use and how that determination should be applied to individual farmers and to specific tracts of decreed land. Unfortunately, the Rules Committee was unable to reach an accord on these issues, and the matter was briefed for argument at the May, 1993 hearing.

In October of 1992, the ADWR generously offered to conduct a special study for the Rules Committee and the court, which will identify land permanently removed from agricultural use.[1] It should be noted, however, that this study will not determine lands not "then being irrigated," but rather, only the total acreage removed from agricultural production because of urban or farming-related development such as parking lots, roads, barns and canals. This study is anticipated to be completed sometime in the Spring of 1994. On the basis of the testimony of an ADWR representative at the May, 1993 hearing, the court is satisfied that ADWR will conduct the study with the highest degree of professionalism and fairness.

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1. As the court observed at the hearing, ADWR's offer is much appreciated. Indeed, it is difficult to envision the quandary the court and the parties would face had ADWR not offered to conduct the study.

Appendix C

B. Discussion

The parties do not dispute that the court should accept ADWR's offer to conduct the study. The principal issues, therefore, are how the ADWR Report should be used by the Water Commissioner and the procedure by which ADWR's determinations may be challenged by affected upper valley farmers.

On the basis of the arguments set forth in the briefing and at the hearing, the court hereby adopts the following rule governing challenges to the determinations contained in ADWR's Report:

(1) Counsel for the Water Commissioner, San Carlos Apache Tribe, Gila River Indian Community, the United States, and the Upper Valley Defendants shall jointly be responsible for notifying all potentially interested parties that the ADWR will be conducting its study.

(2) Following release of the initial draft of the ADWR Report, there will be a comment and review period of 30 days. During this 30 day period, a party may discuss informally with the Water Commissioner any difficulties he or she has with ADWR's initial draft. A party who chooses not to engage in an informal discussion with the Water Commissioner, or continues to be dissatisfied despite such a discussion, may submit a written objection to the ADWR Report to the Water Commissioner. It should be noted, however, that to have standing to file a complaint in the United States District Court, a party must have attempted to resolve the dispute by submitting a written objection to the

Water Commissioner within the comment and review period or must show exceptional circumstances justifying his or her failure to do so.

(3) Within 10 days of receiving a written complaint, the Water Commissioner shall notify interested parties of the objection, and any additional parties that request notice of written objections. Within 30 days of receiving notice of an objection, an interested party may file with the Water Commissioner a short and concise response to the objection.

(4) The Water Commissioner may require that a fee, to be approved by this court, be submitted along with a written objection to cover costs associated with considering the objection and notifying other interested parties of the objection.

(5) Within 90 days from the date the initial draft of the ADWR Report is released, the Water Commissioner shall review all written objections to the Report and forward those which he deems meritorious to the ADWR. The Commissioner shall promptly inform any party whose objection is not forwarded to ADWR of that decision.

(6) In the course of determining whether a written objection has merit, the Water Commissioner may, but is not required to, make factual inquiries including, but not limited to: (1) inspecting a particular piece of land; (2) consulting maps, charts, graphs and other such aids; and (3) discussing the objection with the complaining party and other persons who may have knowledge relating to the objection. Under no circumstances will the Water Commissioner conduct evidentiary hearings or adversary proceedings.

(7) Upon receipt of the written objections that the Water Commissioner concludes have merit, ADWR may conduct further inquiry into the legitimacy of the objection, and may alter or decline to alter its Report as it deems appropriate.

(8) Provided that a timely objection to the initial draft of the Report was filed with the Water Commissioner, a party dissatisfied with ADWR's final report on an issue contained in its written objection to the Water Commissioner may file a complaint with the United States District Court for the District of Arizona. The proceedings in the U.S. District Court will be governed by the summary review procedures discussed in Section VI below. No presumption of validity will apply to any determination of the Water Commissioner or ADWR.

II. Priority Rights Versus Apportionment Rights

Issue — Does the Decree require the Upper Valley Defendants to deplete their water rights acquired through apportioning before diverting water they are entitled to by priority?

A. Background

The Decree gives the UVDs two separate and distinct rights to divert water from the Gila River. First, the UVDs have the right to take water in accordance with the Priority Schedule set forth in Article V of the Decree. Under Article V, after subtracting the water to which the Native Americans below the dam are entitled, remaining water is distributed among the UVDs according to priority date, that is, the earlier

a farmer's priority date the higher his or her priority ("priority rights"). Second, Article VII of the Decree gives the UVDs an additional right to divert water apportioned on the basis of the water height of the San Carlos Reservoir (hence, "apportionment rights").

Since the Decree was first implemented in 1935, the various Water Commissioners have consistently interpreted the Decree as allowing the UVDs to divert water obtained by way of priority before the UVDs have depleted apportioned water. The San Carlos Apache Tribe contends, however, that the Decree and this Court's Memorandum and Order following the November, 1991 trial require the UVDs to exhaust their apportioned water before exercising their right to divert priority water.

B. Discussion

The Apache Tribe argues with vigor that Article VIII(5) of the Decree supports its position that the UVDs must use apportioned water prior to diverting priority water. That provision reads:

> PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, *of or as soon as apportionments previously made to them have been consumed,* shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made

> under and in accord with the rights and priorities set down in Article V, and the Priority Schedule made part hereof, and Article VI of this decree to-wit. . . .

Consent Decree, Art. 8 ¶ 5 (emphasis added). According to the Apache Tribe, this language is clear and unambiguous: "*[p]rovided always*" when the UVDs have apportionments to divert, they shall divert on apportionments. On the other hand, when they have exhausted their apportionments, then they *shall,* divert on priorities. The Apache Tribe thus submits that the Water Commissioner's current practice of allowing the UVDs to divert priority water before depleting apportioned water violates the Decree. In particular, they allege that this practice improperly permits the UVDs to divert priority water while at the same time accumulating stored apportionments to be diverted later. According to the Apache Tribe, Article VIII(5) must be strictly applied by the Gila Water Commissioner to disallow diversions on priority when apportionments are available for diversion.[2]

---

2. The UVDs, with whom the Commissioner concurs, challenge the Apache Tribe's standing to assert this argument. According to the UVDs, because the court held following the 1991 trial that the Apache Tribe's rights are superior to both the UVDs' apportionment and priority rights, that the Apache Tribe is not affected by the UVDs diverting priority water before apportioned water. While provocative, this argument was nullified by the Gila River Indian Community — which indisputably has standing — joining the Apache Tribe's request that the court require the Commissioner to discontinue simultaneous use of apportioned and priority water by the UVDs.

Appendix C

On the basis of the evidence submitted at the November, 1991 trial, the court ruled that the 1924(b) priority must be abolished. In so doing, the court remarked:

> [w]hen water is apportioned to UVDs, they may divert on these apportionments. When the apportionments are exhausted, or cannot be made due to lack of available storage, UVDs must revert to diverting only on priority. Decree, Article VIII(5).

Gila River, 804 F. Supp. at 13. The Apache Tribe argues that this language conclusively resolved the issue regarding the UVDs' concurrent use of priority and apportioned water. This argument, however, derives from a strained reading of the court's order, as the above-quoted language merely states that priority water is available when apportioned water is exhausted or when no water is stored in the reservoir, and does not specifically preclude use of diverted and apportioned water simultaneously.

It is not disputed that over the 55 years of enforcing the Decree, the various water commissioners have consistently permitted the UVDs to divert priority waters before exhausting apportionment rights. Moreover, immediately following implementation of the Decree, no party, including the Decree's drafters, objected to the UVDs diverting apportionment water and priority water concurrently. Indeed, over the long course of litigation concerning the Gila River Decree, no party, until now, has ever raised the issue of whether the Water Commissioners have erroneously interpreted the Decree on this point. It seems evident to the

court that if the Apache Tribe's novel construction of the Decree had merit, someone would have raised it previously. That the drafters of the Decree voiced no objection is particularly probative, for it is reasonable to assume that counsel for the United States would have monitored implementation of the Gila River Decree with a critical eye.

Finally, even assuming the possibility that the construction of the Decree urged by the Apache Tribe is correct, but simply was not asserted until the Apache Tribe's particularly able counsel entered the case in 1989, the court nonetheless feels constrained by the long-standing interpretation of the Decree. To abruptly and significantly alter a critical aspect of the Decree's settlement scheme at this late date would work an undue hardship on the upper valley farmers who have come to rely on consistent interpretations of the Decree's essential provisions. Accordingly, the court holds that the UVDs need not exhaust water derived from apportionment rights prior to diverting on priority water.

III. Sudden Freshets

Issue — Should the Court adopt a rule providing for diversions of water in excess of 1/80th c.f.s. in order to take advantage of sudden freshets, and if so, what type of rule is appropriate?

A. Background

A sudden freshet is a rise in a stream or river caused by heavy rains. The Decree limits the rate of diversion by the

UVDs to 1/80 cubic feet per second per acre. However, Article V, the so-called "sudden freshets" clause, provides that the Commissioner may permit the UVDs to divert water at a rate in excess of 1/80 c.f.s per acre "in order to take proper advantage of sudden freshets or other periods of more plentiful natural flow in the stream" provided that (1) "no injury will result to others not being so accommodated and (2) that the total diversion for the lands involved do not exceed six acre feet per acre per year." In 1972, the Ninth Circuit affirmed this court's ruling that the "so being accommodated" language prohibited the Commissioner from accelerating water diversions without regard to the lower valley users. *United States v. Gila Valley Irrigation District,* 454 F.2d 219, 221 (9th Cir. 1972).

One of the tasks assigned to the Rules Committee was formulating a rule governing the use of sudden freshets. Specifically, the Pre-Trial Order dated November 12, 1991 directed the Rules Committee to consider the following when crafting such a rule: (1) under what circumstances may the Water Commissioner authorize the UVDs to take advantage of sudden freshets or more plentiful natural flow by diverting from the natural flow at a rate greater than 1/80 c.f.s, and (2) what standard should be adopted to determine when "no injury will result" from the application of the sudden freshets clause. Regrettably, the Rules Committee was unable to reach a consensus on how to regulate the use of sudden freshets.

B. Discussion

The parties do not dispute that any rule adopted by the court must comport with the Ninth Circuit's 1972 decision,

and thus excess diversions that would cause the UVDs to exceed their 6 acre foot per acre of land limitation or their 120,000 acre foot consumptive use limitation will not be permitted under any circumstances. Beyond these fundamental requirements, however, the court agrees with the UVDs that it is not possible to draft a succinct and manageable rule encompassing every possible permutation in the flow of the Gila River. Under these circumstances, the court concludes that the Water Commissioner must be afforded some degree of discretion to ensure that the rights of the lower valley users are not impinged and, where possible, avoid wastage.

To aid the Commissioner in the exercise of his discretion, the following factors, in addition to the above-referenced conditions, should be considered when deciding if the UVDs may divert excess water pursuant to the sudden freshets clause: (1) whether the releases from Coolidge Dam are creating a spill at Ashurst-Hayden Dam, and (2) whether the combined flows of the San Pedro River and releases of water from Coolidge Dam are resulting in spilling at Ashurst/ Hayden Dam. If one or both of these conditions are met, the UVDs should normally be allowed to divert excess water under the sudden freshets clause. However, even where one or both conditions are met, the Commissioner may appropriately deny permission to utilize a sudden freshet if so doing might abridge the rights of the lower valley users. Also, the Commissioner, in exercising his discretion, may conclude in extraordinary circumstances that the UVDs should be permitted to divert sudden freshet water despite the absence of either of the two above-referenced conditions. Finally, if either of these spill conditions exist, the Water

Commissioner must be satisfied that the releases from Coolidge Dam have not been changed so as to stop the spilling at Ashurst-Hayden.

It should be noted that this is merely an interim rule, and that a new rule will be fashioned upon completion of a reliable call system. As for the Gila Crossing, the court concludes that this issue should not be addressed until the conditions for water diversions at Gila Crossing are fully known.

IV. Changes in Points of Diversion and Places, Means, Manner or Purpose of the Use of the Waters of the Gila River

Issue — Should the court adopt the rule drafted by the Water Commissioner which sets forth a procedure governing transfers of water rights prescribed by the Decree?

In applicable part, Article XI of the Decree provides that

> any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or any part thereof, so far as they may do so with out injury to the rights of other parties as the same are defined herein.

In its Memorandum and Order dated September 15, 1992, the court directed the Rules Committee to prepare and submit

proposed rules for transferring water rights. These rules were to be substantially similar to the Arizona water transfer statute, and provide adequate notice of proposed changes to the parties to the Decree and for summary review by the court. *Gila River,* 801 F. Supp. at 12. After several meetings of the Rules committee, however, it became apparent that agreement would not be forthcoming. Accordingly, on the basis of the arguments set forth in the briefing and at the May, 1993 hearing, the court hereby adopts the following rule governing the transfer of water rights under the Decree:

Section 1. *Application for change in the point of diversion, place, means, manner or purpose of the use of waters subject to the Gila Decree*

A. An application for a change in the point of diversion, place, means, manner or purpose of use of waters subject to the Gila Decree shall be filed with the Gila Water Commissioner (a "Change in Use Application").

B. The applicant, shall, at the time of filing the Change in Use Application with the commissioner, pay a filing fee, to be determined by the Commissioner and approved by the court, and shall deposit with the Commissioner an amount sufficient to cover all costs associated with the processing of the Change in Use Application, including mailing and publication costs.

Appendix C

C. The application shall be in such form as prescribed by the Commissioner and shall include:

1. Name, address and telephone number of the applicant;

2. Location of existing point of diversion or place of use (legal description and map/survey) and proposed new manner of use;

3. Location of proposed new point of diversion of place of use (legal description and map/survey) and proposed new manner of use;

4. Quantity of water involved in the change and rate of diversion (if only a portion of the water right is proposed to be transferred, a statement of how remainder will be used);

5. Purpose for which the application is filed;

6. Reference to the Gila Decree wherein the water right was defined and adjudicated and the priority date of such right;

7. Purpose of existing use and proposed purpose of use;

8. Name, address and telephone number of irrigation district or project within which existing right is used;

Appendix C

9. Name, address and telephone number of irrigation district within which the right would be transferred to;

10. Name of canal company presently delivering water under right and name of canal company which would deliver water under proposed transfer;

11. A description of the historical use of the water right for the last ten (10) years; and

12. Such other information as may be necessary to permit complete understanding of the proposed change.

D. The application shall be accompanied by the written consent and approval of the governing body of each irrigation district, irrigation project and canal company named in C.8, 9 and 10 above or the statement of the applicant that a written request for such consent and approval was delivered or mailed, return receipt requested, to such body and forty-five (45) days have elapsed since the receipt of the application and request for approval by such body. Failure of such governing body to approve or reject the proposed application within 45 days after receipt shall constitute approval of the application.

E. A separate application must be filed for each water right affected by the proposed change or changes.

F. The applicant shall state under oath that the information contained in the application is true and correct, to the best of the applicant's knowledge at the time of filing.

Appendix C

G. Failure to provide the foregoing information and approvals will result in rejection of the application.

H. (1) No change in the point of diversion, place, means, manner or purpose of use shall be made under these Rules with respect to any decreed right to water which, under applicable law, has been forfeited or abandoned.

(2) The Commissioner is not authorized to make any determination as to whether a water right has or has not been abandoned or forfeited. If an objection to an application is that the water right has been abandoned or forfeited, such objection shall be determined in proceedings before the United States District Court under Section 4 herein, and the Commissioner shall not deny an application on the basis of abandonment or forfeiture.

I. If the Commissioner denies an application for any reason the applicant shall have the right to have the application heard by the court upon filing of a complaint as provided in Article XII of the Gila Decree; provided that such complaint shall also be served in accordance with Federal Rule of Civil Procedure 5(b) on the parties listed in Section 2, paragraph B.

J. If the Commissioner denies an application because the applicant has failed to comply with any provision of these rules, the applicant may file another application with the Commissioner which complies with these rules.

Appendix C

Section 2. ***Notice of Change in Use Application***

A. Any party holding a water right adjudicated under the Gila Decree may file a written request with the Commissioner for special notice of all Change in Use Applications filed pursuant to these rules. The request shall state the mailing address of the party. The Commissioner shall keep a list of such requests. The Commissioner may periodically, but not more frequently than once a year, require by written notice to each such party a renewal of such request for notice.

B. Within 30 days after the application is filed the Commissioner shall send, by certified mail, return receipt requested, a copy of the application, together with a copy of a written notice setting forth the date by which objections to the application must be filed in the office of the Commissioner, to: The United States, c/o The United States Department of the Interior, Office of the Field Solicitor; Bureau of Indian Affairs, Phoenix Area Office and Superintendent, San Carlos Agency; The Franklin Irrigation District; The Gila Valley Irrigation District; The San Carlos Apache Tribe, The Gila River Indian Community; The San Carlos Irrigation and Drainage District; The San Carlos Project; The State of Arizona, c/o the Attorney General; ASARCO, Inc.; any canal companies named in the application and to each party who has filed with the Commissioner a request for special notice. Parties to whom notice is to be mailed shall file with the Commissioner a list of names and addresses to which the notice shall be mailed which may include counsel for such parties.

Appendix C

C. The Commissioner shall also cause a copy of the notice of Change in Use Application to be published once a week for three successive weeks in a newspaper of general circulation in the county and counties in which the change is to occur (and in the counties of Greenlee, Graham, Pinal and Maricopa, Arizona).

D. The notice of Change in Use Application shall set forth:

(1) That the application has been filed;

(2) The date of filing;

(3) The name and address of the applicant;

(4) The location of the existing point of diversion or place of use and present manner of use;

(5) The location of the proposed new point of diversion or place of use and proposed new manner of use;

(6) The quantity of water involved in the proposed change;

(7) Names of irrigation district or irrigation project and canal companies affected by the proposed change;

(8) The purpose for which the application has been filed;

(9) Date by which objections must be filed with the Commissioner.

Appendix C

Section 3. *Objections to Change is Use Application*

A. An objection to a Change in Use Application may be filed under these rules only by a person, corporation, governmental agency, Indian Tribe or other entity holding a water right under the Gila Decree for itself or in trust for another.

B. An objection to the application shall be in writing and verified and shall be filed in the office of the Commissioner on or before the date specified in the notice which shall be a date 90 days after the date of the last publication of the notice. An objection shall set forth the name, address and telephone number of the objector and shall set forth the grounds for the objection in a manner to permit complete understanding of the objection.

C. Within ten (10) business days after an objection is filed, the objecting party shall send a copy of the objection in the manner and to the parties specified in paragraph 2.B above. An objection shall also be filed within such time with the United States District Court which shall be served in accordance with Federal Rule of Civil Procedure 5(b).

D. If no objection to the application is filed in the Office of the Commissioner on or before the date specified in the notice, the Commissioner shall grant or deny the application on the basis of the information contained in the application. If the Commissioner approves the application, the Commissioner shall forthwith file the application with the Clerk of the Court with the Commissioner's affidavit setting forth the matters contained in the notice and stating that no

objection has been filed pursuant to these Rules and that the Commissioner has approved the application and shall submit an order to the court for the court's approval of the change in use. The applicant shall be responsible for the costs of preparation of such affidavit and order.

E. A party who fails to file a timely objection with the Commissioner may not object to a proposed transfer during review by the court.

Section 4. ***Proceedings Before the Court***

A. Upon the filing and service of an objection as provided in Section 3, paragraph B, the applicant or objector may request an evidentiary hearing before the court. The Federal Rules of Evidence shall apply to such hearings and the matter shall be tried without a jury.

B. The applicant shall have the burden of establishing a prima facie case of no injury to the rights of other parties under the Gila Decree and a right to transfer. Upon making such a prima facie showing, the burden of proof will shift from the applicant to the objecting party to demonstrate that injury will result from the proposed change or that the applicant has no right to the proposed transfer.

C. The decision of the court regarding a Change in Use Application shall not take effect until the court enters an order approving the change and such decision becomes final. The applicant or objecting party shall have the right to appeal the order in accordance with the Federal Rules of Appellate Practice.

Appendix C

D. A party may seek an expedited hearing before the court upon a showing of exigent or exceptional circumstances by filing a motion for an expedited hearing at the time a complaint is filed or subsequent to filing of a complaint as warranted by the circumstances.

E. A party found to have filed a frivolous Change in Use Application or asserting a frivolous objection thereto may be assessed costs at the discretion of the court.

V. Call System

Issue — Discussion *on* the court's direction to the Rules Committee that the 1924(b) priority system be replaced with a call system.

In its order following the last trial, the court ruled that a call system must be implemented to replace diversions on the basis of priority. The court stated:

> [b]ased on this analysis, the Court concludes, first, that the 1924(b) priority practice must be abolished. In its place the Rules Committee is directed to develop and recommend a system allowing for the exercise of prior calls on the flow of the Gila River. Such a system may or may not be similar to that proposed by the GRIC, but it must adequately account for the typical lag in the water's travel downstream between Duncan-Virden, Safford, the San Carlos Reservoir, and Ashurst-Hayden Dam.

Gila River, 804 F. Supp. at 15. The court subsequently directed the Rules Committee to confer with Gookin Engineering to determine what issues are likely to develop. Because this project, as with most issues involving the Decree, proved considerably more difficult than appeared at first blush, the Rules Committee was unable to do so prior to the May, 1993 hearing. For the same reason, Gookin Engineering has yet to finish preparing a proposed call system. The court therefore refers to the Rules committee all issues surrounding implementation of the call system currently under design by Gookin Engineering.

VI. Summary Review

Issue — What type of summary review procedure should be implemented to expedite resolution of comparatively minor disputes and what role should the Water Commissioner play in such a scheme?.

All parties agree that some type of summary review procedure is needed so that a complaint need not be filed with this court whenever someone believes that the Commissioner has erred. The parties disagree, however, on the appropriate role of the Water Commissioner in any such summary review procedure.

The relevant portion of the Consent Decree is Article XII, which states:

> any person, feeling aggrieved by any action or order of the Water Commissioner, in writing and under oath, may complain to the Court, after

> service of a copy of such complaint on the Water Commissioner, and the Court shall promptly review such action or order and make such order as may be proper in the premises;

At the January, 1993 Rules Committee meeting, counsel for the UVDs agreed to draft a proposed rule setting forth a summary review procedure. The resulting proposed rule drafted by the UVDs generated considerable opposition from the parties, in particular, Section II, which requires that disputes first be presented to the Water Commissioner for resolution.

The United States, the Apache Tribe, and the GRIC oppose section II of the UVDs' proposed rule on the ground that it places the Commissioner in an adjudicative role in violation of the Decree. These parties argue that Article XII of the Decree specifically states that a party dissatisfied with any action of the Commissioner may file a complaint in the District Court. Therefore, according to these parties, requiring a party to first file a complaint with the Water Commissioner would impermissibly alter the terms of the Decree.

This argument has merit. Under a strict reading of Article XII, a party dissatisfied with "any action" of the Water Commissioner may file a complaint in this court after serving the Commissioner, whereupon his or her complaint must be "promptly" reviewed. Consent Decree, Art. XII. The Decree simply does not limit court review to final or challenged actions of the Commissioner. Because the process for challenging the Commissioner's actions is set forth in considerable detail, it is reasonable to infer that the Decree's

drafters did not intend additional procedures to be added. The court therefore rejects the UVDs' proposal that complaints first be considered by the Commissioner.

In light of the court's determination that the Commissioner is not to serve in an adjudicative role, the court hereby directs the Apache Tribe to revise the proposed rule submitted by the UVDs, and to present this revised version to the Rules Committee. To aid in the drafting of such a rule, the parties are advised that, in consideration of the enormous complexity of the Decree, the court will not approve a rule which provides for evidentiary hearings to be referred to another judge or magistrate of this court as a matter of course. Instead, summary review by another judge or by a magistrate should be limited to exigent or extraordinary circumstances.

VII. Article VIII(4)

Issue — How should the Commissioner interpret the "proper irrigation of 80,000 acres of land" provision in Article VIII(4)?

Article VIII(4) provides

> [t]hat water released at the will of the plaintiff and for the purpose of the plaintiff from the San Carlos Reservoir at any time after the date of this Decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date

> of such releases, and available as a basis for the above described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

Decree, at p. 107.

As originally framed, the primary issue concerning interpretation of Article VIII(4) was the meaning of "for the proper irrigation of 80,000 acres." At the hearing, it became clear that above-quoted language is arguably subject to multiple interpretations. Although not briefed, most of the discussion at the hearing concerned whether Article VIII(4) requires that the UVDs' apportionment rights be calculated on the basis of the amount of water above the penstocks at Coolidge Dam — as the Water Commissioner has been doing since implementation of the Decree — or whether, as the lower valley users and the United States contend, the apportionment rights of the UVDs should be calculated on the basis of the water in the dam in excess of the amount required for the "proper irrigation of 80,000 acres."

As the parties acknowledged at the May hearing, this is a crucial issue, involving at least tens of thousands of acre feet of water. Transcript, pp. 286-327. The lower valley users and the United States rely chiefly on a letter drafted by Mr. Iverson, counsel for the United States at the time the Decree was entered. The UVDs, in turn, objected at the hearing that they did not realize that the lower valley users would be arguing their novel interpretation of Article VIII(4) until that day, and pointed out that the issue had not been briefed. On August 2, 1993, the UVDs filed a motion

requesting that a ruling on this issue be delayed until completion of the discovery currently underway. It appearing to the court that additional discovery is required, the motion is granted. The parties are directed to inform the court upon completion of discovery, and to submit a stipulated briefing schedule for the court's approval.

VIII. Winkelman Report

Issue — How should the Winkelman Report be used in enforcing the consumptive use limitation?

Under the Decree, the yearly consumptive use limit for the UVDs is 120,000 acre feet. The Decree further requires the Water Commissioner to reduce diversions in the upper valleys, in the inverse order of priority, to the extent necessary to ensure that consumptive use in the upper valleys never exceeds the 120,000 acre feet limit.

Enforcing the consumptive use limitation has not been a major source of contention. Rather, it appears that since the Decree's inception in 1935, the limit has been exceeded in just six years, the most recent being 1975, a year when water was plentiful. Nonetheless, the Commissioner who preceded Mr. Weesner advised the court during the 1990 that he needed assistance in enforcing the limitation. Accordingly, the Court authorized Ms. Winkelman, a graduate student at Arizona State University, to conduct a statistical study of consumptive use in the upper valleys. That study has now been completed and submitted to the court.

The Water Commissioner urges that the Winkelman

Report be used as a guide, and cautions that rigid adherence to the Report would be imprudent. According to the Commissioner's retroactive application of the Winkelman recommendations to previous violation years, the reduction in diversions recommended by the Report would have surpassed the amount necessary to avoid exceeding the limitation, thereby depriving the UVDs of entitled waters. Thus, while the Commissioner considers the Report helpful, he feels that he should not be bound by its proposed methodology.

At the May, 1993 hearing, all parties agreed that the Winkelman Report, while instructive, should not be binding on, the Commissioner. Accordingly, the Commissioner shall, within his discretion, utilize the methodology set forth in the Winkelman Report insofar as he finds it beneficial. As such, the Commissioner may reject all or part of the Winkelman methodology when enforcing the 120,000 acre feet consumptive use limitation. Of course, the Rules Committee may fashion a more accurate method of enforcement if it so chooses.

IX. The November, 1994 Trial.

Issue — What issues should be adjudicated at the trial currently scheduled for November 7, 1994, and in what manner should those issues be tried?

A consensus was reached at the May, 1993 hearing that, in addition to the water quality issue, all unresolved issues pending before the Rules Committee should be adjudicated at the November 7, 1994 trial provided that no conflicts of

interest arise for counsel and all interested parties receive adequate notice. Transcript, p. 363. It is the court's hope that the upcoming settlement discussions and future Rules Committee meetings will resolve many of these pending issues.

At the May, 1993 hearing, counsel for the UVDs expressed concern over potential conflicts of interest should the court elect to adjudicate the impact of particular insecticides and fertilizers used by the upper valley farmers on the quality of the water available to the lower valley users. The court appreciates the concern of counsel; accordingly, the trial will be limited to the general question of whether the insecticides and fertilizers used by the UVDs must be regulated to maintain an appropriate water-quality level for the users down river from Coolidge Dam, and will be tried as a class action not subject to opting out. *See* F. R. Civ. P. 23(b). For the same reasons, the court will similarly limit the November, 1994 trial to the general issue of whether pumping underground water contributes to poor water quality, and if so, whether pumping should be regulated. The court will not litigate the impact of particular wells or pumping by specific upper valley users. Finally, there being no objection to including the issue of whether the agreement between the Gila River Indian Community and ASARCO in 1977 is void as violative of the Decree, it will be adjudicated as well at the November 7, 1994 trial.

In consideration of the foregoing, and as was discussed at the hearing, the Apache Tribe is directed to submit a proposed order regarding the Cosper's Crossing issue. After such an order is signed and entered by the court, the Apache

Appendix C

Tribe will mail a copy of the order to each landowner on a list, to be compiled by the Water Commissioner, of potentially interested farmers residing above Cosper's Crossing, notifying them that the issue will be adjudicated in November of 1994, and that if they wish to participate, that they need to appear or have counsel appear on their behalf.

DATED this 23 day of September, 1993.

s/ John C. Coughenour
John C. Coughenour
United States District Judge

APPENDIX D — USGS WATER RESOURCES DATA ARIZONA WATER YEAR 2005

USGS
science for a changing world

Prepared in cooperation with the State of Arizona and with other agencies

Water Resources Data
Arizona
Water Year 2005

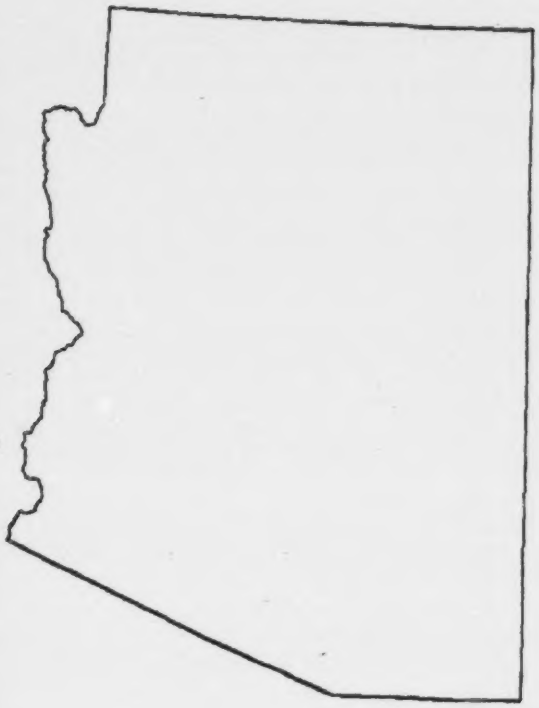
Water-Data Report AZ-05-1

U.S. Department of the Interior
U.S. Geological Survey

Water Resources Data
Arizona
Water Year 2005

By G.G. Fisk, N.P. Duet, E.H. McGuire, W.P. Roberts,
N.K. Castillo, and C.F. Smith

Water-Data Report AZ-05-1



Prepared in cooperation with the
State of Arizona and with other agencies

U.S. Department of the Interior
U.S. Geological Survey

U.S. Department of the Interior
Gale A. Norton, Secretary

U.S. Geological Survey
Charles G. Groat, Director

2006

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Additional earth science information is available by accessing the USGS home page at http://www.usgs.gov/.

09447800 BONITA CREEK NEAR MORENCI, AZ

LOCATION.--Lat 32°57'20", long 109°31'50", in SE¼NW¼ sec. 36, T.5 S., R.27 E., Graham County, Hydrologic Unit 15040005, on left bank 2 mi upstream from intake of city of Safford water supply, 6.3 mi upstream from mouth, and 12.8 mi southwest of Morenci.

DRAINAGE AREA.--302 mi^2.

PERIOD OF RECORD.--Aug. 1981 to current year.

GAGE.--Water-stage recorder. Elevation of gage is 3,500 ft above sea level, from topographic map. Two crest-stage gages 440 ft upstream on right and left banks.

REMARKS.--Records fair except for estimated daily discharges, which are poor.

EXTREMES FOR PERIOD OF RECORD.--Maximum discharge, 19,500 ft^3/s Jan. 18, 1993, gage height, 16.5 ft, from slope-area measurement of peak flow; minimum daily, 0.66 ft^3/s Aug. 31, 1988.

EXTREMES OUTSIDE PERIOD OF RECORD.--Flood of Dec. 20, 1972, 10,000 ft^3/s, from slope-area measurement made by city of Safford at site about 2 mi downstream. Flood of June 27, 1981, 1,340 ft^3/s, from slope-area measurement at present site, gage height, 5.6 ft, from floodmark.

EXTREMES FOR CURRENT YEAR.--Peak discharges greater than base discharge of 300 ft^3/s and (or) maximum (*):

Date	Time	Discharge (ft^3/s)	Gage height (ft)
Feb. 12.....	1452	*1,720	*8.47e

Minimum daily discharge, 1.3 ft^3/s, Aug. 18 to 25.

e from floodmark

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 2004 TO SEPTEMBER 2005
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	2.3	2.3	2.5	3.3	4.9	9.3	3.6	2.8	1.9	1.7	1.7	1.5
2	2.3	2.3	2.5	3.4	4.8	8.6	3.6	2.8	1.9	1.7	1.6	1.6
3	2.4	2.3	2.5	3.4	4.8	8.0	3.5	2.7	1.9	1.7	1.6	1.7
4	2.3	2.3	2.6	8.6	4.9	7.8	3.5	2.6	1.9	1.7	1.6	1.7
5	2.3	2.3	2.6	15	5.7	7.4	3.5	2.5	1.8	1.7	1.6	1.7
6	2.4	2.3	2.7	8.8	6.4	7.5	3.4	2.5	1.8	1.7	1.6	1.8
7	2.4	2.4	2.7	6.4	6.4	7.3	3.3	2.5	1.8	1.7	1.5	1.9
8	2.4	2.4	2.6	5.4	6.4	7.0	3.3	2.4	1.8	1.7	1.5	2.0
9	2.4	2.4	2.7	5.0	6.3	6.7	3.2	2.4	1.8	1.7	1.6	2.0
10	2.4	2.4	2.7	4.7	7.9	6.5	3.3	2.3	1.8	1.7	1.5	2.0
11	2.5	2.4	2.8	4.6	9.0	6.2	3.3	2.3	1.7	1.7	1.5	1.9
12	2.4	2.4	2.7	4.7	926	6.0	3.3	2.3	1.7	1.7	1.5	2.0
13	2.5	2.4	2.7	4.6	481	5.9	3.2	2.3	1.7	1.7	1.5	2.0
14	2.5	2.4	2.7	4.5	e98	5.8	3.1	2.3	1.7	1.7	1.5	2.0
15	2.4	2.4	2.8	5.3	e39	5.8	3.1	2.3	1.7	1.7	1.4	2.0
16	2.4	2.4	2.8	5.3	e24	5.7	3.0	2.3	1.8	1.7	1.4	2.0
17	2.4	2.4	2.8	5.3	e18	5.6	2.9	2.3	1.8	1.6	1.4	2.0
18	2.4	2.4	2.8	5.1	14	5.5	3.0	2.2	1.8	1.7	1.3	1.9
19	2.4	2.3	2.8	5.1	18	5.3	3.0	2.2	1.7	1.6	1.3	1.9
20	2.3	2.3	2.9	5.0	113	5.3	2.9	2.2	1.6	1.6	1.3	1.9
21	2.4	2.3	3.0	5.0	142	5.1	2.9	2.2	1.7	1.7	1.3	1.9
22	2.4	2.9	3.0	4.9	47	5.0	2.9	2.1	1.6	1.7	1.3	1.9
23	2.4	2.5	3.0	4.8	24	4.8	2.9	2.1	1.6	1.6	1.3	1.9
24	2.3	2.4	3.0	4.8	16	4.6	3.1	2.1	1.7	1.7	1.3	1.9
25	2.3	2.4	3.0	4.8	13	4.7	3.0	2.1	1.7	1.6	1.3	1.9
26	2.3	2.4	3.1	4.9	12	4.8	3.0	2.1	1.7	1.7	1.4	1.9
27	2.3	2.4	3.1	5.2	11	4.7	2.9	2.0	1.7	1.7	1.4	1.9
28	2.3	2.4	3.1	5.1	9.8	4.5	2.9	2.0	1.7	1.7	1.5	2.0
29	2.3	2.4	3.1	4.9	---	4.3	2.9	2.0	1.7	1.7	1.5	1.9
30	2.3	2.4	3.2	4.8	---	4.0	2.9	2.0	1.7	1.7	1.5	2.0
31	2.3	---	3.3	5.0	---	3.7	---	2.0	---	1.7	1.5	---
TOTAL	73.4	71.7	87.7	167.7	2073.3	183.4	96.4	70.9	52.4	52.2	45.2	56.7
MEAN	2.37	2.39	2.83	5.41	74.0	5.92	3.15	2.29	1.75	1.68	1.46	1.89
MAX	2.5	2.9	3.2	15	926	9.3	3.6	2.8	1.9	1.7	1.7	2.0
MIN	2.3	2.3	2.5	3.3	4.8	3.7	2.9	2.0	1.6	1.6	1.3	1.5
AC-FT	146	142	174	333	4110	364	187	141	104	104	90	112
CFSM	0.01	0.01	0.01	0.02	0.25	0.02	0.01	0.01	0.01	0.01	0.00	0.01
IN.	0.01	0.01	0.01	0.02	0.26	0.02	0.01	0.01	0.01	0.01	0.01	0.01

STATISTICS OF MONTHLY MEAN DATA FOR WATER YEARS 1982 - 2005, BY WATER YEAR (WY)

MEAN	13.0	6.22	8.89	46.2	26.9	12.8	4.86	3.80	3.07	6.44	7.15	7.04
MAX	176	21.7	29.6	769	165	53.6	10.7	6.33	5.86	44.5	14.6	28.6
(WY)	1984	1995	1983	1993	1993	1995	1998	1993	1995	1999	2000	1996
MIN	1.52	1.86	2.26	3.43	2.71	2.74	2.00	2.10	1.32	1.68	1.46	1.20
(WY)	1992	1992	2004	2004	2004	2001	1991	1991	1983	2005	2005	2003

SUMMARY STATISTICS	FOR 2004 CALENDAR YEAR		FOR 2005 WATER YEAR		WATER YEARS 1982 - 2005	
ANNUAL TOTAL	984.5		3029.0			
ANNUAL MEAN	2.69		8.30		12.2	
HIGHEST ANNUAL MEAN					83.7	1993
LOWEST ANNUAL MEAN					2.54	2004
HIGHEST DAILY MEAN	7.0	Aug 18	926	Feb 12	10200	Jan 19 1993
LOWEST DAILY MEAN	1.4	Aug 7	1.3	Aug 18	0.7	Dec 21 1982
ANNUAL SEVEN-DAY MINIMUM	1.5	Aug 1	1.3	Aug 18	0.77	Aug 26 1988
ANNUAL RUNOFF (AC-FT)	1950		6010		8810	
ANNUAL RUNOFF (CFSM)	0.009		0.027		0.040	
ANNUAL RUNOFF (INCHES)	0.12		0.37		0.55	
10 PERCENT EXCEEDS	3.8		4.3		8.5	
50 PERCENT EXCEEDS	2.4		2.4		4.3	
90 PERCENT EXCEEDS	2.0		1.6		2.2	

e Estimated

BEST AVAILABLE COPY

09468500 SAN CARLOS RIVER NEAR PERIDOT, AZ

LOCATION.--Lat 33°17'47", long 110°27'03", in SE¼ sec. 36, T.1 S., R.18 E. (unsurveyed), Gila County, Hydrologic Unit 15040007, in San Carlos Indian Reservation, on U.S. Highway 70 bridge, 0.9 mi south of Peridot.

DRAINAGE AREA.--1,026 mi^2.

PERIOD OF RECORD.--Aug. 1910 to Jan. 1911 (gage heights only), Apr. 1914 to July 1915, Aug. to Sept. 1915 (monthly discharge only), Oct. 1929 to current year. Prior to Oct. 1929 published as "at San Carlos."

REVISED RECORDS.--WSP 1283: Drainage area.

GAGE.--Water-stage recorder. Datum of gage is 2,542.29 ft above sea level (AZ Highway Department benchmark). See WSP 1713 or 1733 for history of changes prior to Feb. 1, 1942. Feb. 1, 1942, to Aug. 13, 1970, at sites 1.9 mi upstream at different datums. Aug 14, 1970, to Sept. 30, 1980, at site 1.8 mi upstream at datum 2,578.90 ft. above sea level. Supplementary water-stage recorder Dec. 21, 1967, to July 2, 1968, at site 2.2 mi downstream at datum in use prior to Feb. 1, 1942; Jan. 31, 1979, to Sept. 30, 1980, at present site and datum.

REMARKS.--Records fair except for estimated daily discharges, which are poor. Diversions above station for irrigation of about 600 acres. Small inflow from sewage treatment system about 3.6 mi upstream. Flow regulated to some extent since June 15, 1979, by Talkalai Reservoir, capacity, about 6,000 acre-ft.

EXTREMES FOR PERIOD OF RECORD.--Maximum discharge, 54,800 ft^3/s Jan. 8, 1993, gage height, 12.12 ft, from rating curve extended above 23,000 ft^3/s on basis of rate of change in storage in San Carlos Reservoir; maximum gage height 14.8 ft, Dec. 22, 1965, site and datum then in use; no flow at times in most years.

EXTREMES FOR CURRENT YEAR.--Peak discharges greater than base discharge of 2,200 ft^3/s and (or) maximum (*):

Date	Time	Discharge (ft^3/s)	Gage height (ft)
Jan. 5	0215	5,450	8.79
Feb. 12	1745	*20,000	*11.46
Feb. 20	0930	10,200	9.91

Minimum daily discharge, no flow for many days.

DISCHARGE, CUBIC FEET PER SECOND, WATER YEAR OCTOBER 2004 TO SEPTEMBER 2005
DAILY MEAN VALUES

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	0.00	0.00	0.00	96	134	92	15	7.3	0.00	0.00	0.00	0.23
2	0.00	0.00	0.00	46	104	67	14	7.0	0.00	0.00	81	0.00
3	0.00	0.00	0.00	34	87	55	14	7.0	0.00	0.00	21	0.00
4	0.00	0.00	0.00	1990	69	47	14	6.9	0.00	0.00	0.00	0.00
5	0.00	0.00	0.00	2430	59	48	12	6.4	0.00	0.00	50	0.00
6	0.00	0.00	0.00	409	50	98	11	5.8	0.00	0.00	0.00	0.00
7	0.00	0.00	e0.84	228	46	231	11	5.0	0.00	0.00	3.8	0.00
8	0.00	0.00	e1.5	164	68	117	10	3.3	0.00	0.00	0.00	0.00
9	0.00	0.00	e2.7	128	101	66	11	2.9	0.00	0.00	0.00	0.00
10	0.00	0.00	3.3	109	81	50	11	2.4	0.00	0.00	0.00	0.00
11	0.00	0.00	6.7	93	491	42	11	1.9	0.00	0.00	0.00	0.00
12	0.00	0.00	8.2	76	12000	34	10	1.4	0.00	0.00	2.0	0.00
13	0.00	0.00	9.3	69	3530	30	10	1.4	0.00	0.00	5.6	0.00
14	0.00	0.00	11	67	777	27	10	1.2	0.00	0.00	0.00	0.00
15	0.00	0.00	14	58	371	24	9.7	1.1	0.00	0.00	0.00	0.00
16	0.00	0.00	15	50	264	21	9.8	0.96	0.00	0.00	0.00	0.00
17	0.00	0.00	17	42	198	21	10	0.94	0.00	0.00	0.00	0.00
18	0.00	0.00	18	37	163	20	9.1	0.92	0.00	0.00	0.00	0.00
19	0.00	0.00	19	31	706	18	8.9	0.93	0.00	0.00	0.00	0.00
20	0.00	0.00	18	28	5180	20	9.1	0.84	0.00	0.00	0.00	0.00
21	0.00	0.00	15	23	1050	19	8.5	0.70	0.00	0.00	0.00	0.00
22	0.00	0.00	15	20	785	18	8.0	0.60	0.00	0.00	0.00	0.00
23	0.00	0.00	18	19	589	19	8.6	0.47	0.00	0.00	0.00	0.00
24	0.00	0.00	15	19	343	19	9.2	0.32	0.00	0.00	0.00	0.00
25	0.00	0.00	15	20	231	19	7.9	0.24	0.00	0.00	0.00	0.00
26	0.00	0.00	16	25	171	18	8.0	0.18	0.00	0.00	0.00	0.00
27	0.00	0.00	17	33	157	19	7.7	0.03	0.00	0.00	0.00	0.00
28	0.00	0.00	19	342	130	18	6.9	0.00	0.00	0.00	0.00	0.00
29	0.00	0.00	36	206	---	17	6.6	0.00	0.00	0.00	0.00	0.00
30	0.00	0.00	316	145	---	17	7.0	0.00	0.00	0.00	0.00	0.00
31	0.00	---	256	147	---	17	---	0.00	---	0.00	0.00	---
TOTAL	0.00	0.00	881.94	7182	27935	1326	299.0	68.33	0.00	0.00	162.00	0.23
MEAN	0.00	0.00	28.4	232	998	42.8	9.97	2.20	0.00	0.00	5.23	0.01
MAX	0.00	0.00	316	2430	12000	231	15	7.3	0.00	0.00	81	0.23
MIN	0.00	0.00	0.00	19	46	17	6.6	0.00	0.00	0.00	0.00	0.00
AC-FT	0.00	0.00	1750	14250	55410	2630	593	136	0.00	0.00	321	0.6
CFSM	0.00	0.00	0.03	0.23	0.97	0.04	0.01	0.00	0.00	0.00	0.01	0.00
IN.	0.00	0.00	0.03	0.26	1.01	0.05	0.01	0.00	0.00	0.00	0.01	0.00

STATISTICS OF MONTHLY MEAN DATA FOR WATER YEARS 1930 - 2005, BY WATER YEAR (WY)

MEAN	27.6	19.3	99.7	138	170	140	23.2	7.47	3.46	17.5	49.7	23.8
MAX	519	178	1581	3208	1500	1262	170	41.8	19.8	84.6	320	166
(WY)	1973	1979	1966	1993	1980	1941	1941	1980	1993	1930	1990	1983
MIN	0.00	0.00	5.07	5.80	7.03	4.83	2.17	0.03	0.00	0.00	0.29	0.00
(WY)	2003	2005	1951	1958	1953	1959	1959	2004	1948	1947	2003	1956

SUMMARY STATISTICS	FOR 2004 CALENDAR YEAR		FOR 2005 WATER YEAR		WATER YEARS 1930 - 2005	
ANNUAL TOTAL	4107.62		37854.50			
ANNUAL MEAN	11.2		104		59.6	
HIGHEST ANNUAL MEAN					436	1993
LOWEST ANNUAL MEAN					6.61	2002
HIGHEST DAILY MEAN	779	Mar 6	12000	Feb 12	20000	Jan 8 1993
LOWEST DAILY MEAN	0.00	May 1	0.00	Oct 1	0.00	Jun 16 1930
ANNUAL SEVEN-DAY MINIMUM	0.00	May 3	0.00	Oct 1	0.00	Jun 24 1930
ANNUAL RUNOFF (AC-FT)	8150		75080		43200	
ANNUAL RUNOFF (CFSM)	0.011		0.101		0.058	
ANNUAL RUNOFF (INCHES)	0.15		1.37		0.79	
10 PERCENT EXCEEDS	15		97		65	
50 PERCENT EXCEEDS	0.00		0.00		9.5	
90 PERCENT EXCEEDS	0.00		0.00		0.50	

e Estimated

(3)

No. 06-173

FILED
OCT 5 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

vs.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO, LLC; PHELPS DODGE CORPORATION; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

PHELPS DODGE CORPORATION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Arizona Supreme Court correctly apply the doctrine of comity by refusing to consider the Tribe's argument that, as a result of alleged inadequate representation by the United States, the Tribe is not bound by the terms of a consent decree entered in 1935 settling all of the Tribe's claims to water from the Gila River, where the Tribe elected not to raise this argument with the United States District Court expressly retaining jurisdiction over the consent decree, and where this Court has repeatedly held that claim preclusion bars Indian tribes from relitigating water rights that have already been adjudicated on their behalf by the United States as trustee?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6, Phelps Dodge Corporation ("Phelps Dodge") incorporates by reference its Corporate Disclosure Statement set forth in Phelps Dodge's Conditional Cross-Petition for Writ of Certiorari, No. 06-333.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
1. The *Globe Equity* Litigation	1
2. The State Court *Gila River Adjudication*	2
3. The *San Carlos Apache Tribe v. Arizona* Litigation	3
4. The Tribe Has More Water Rights Than Those Awarded in The *Globe Equity* Litigation	4
REASONS FOR DENYING THE PETITION	5
I. THIS COURT HAS TWICE REJECTED INDIAN TRIBES' ALLEGED CLAIMS OF INADQUATE REPRESENTATION BY THE UNITED STATES IN WATER RIGHTS ADJUDICATIONS	5
II. THE ARIZONA SUPREME COURT PROPERLY APPLIED THE PRINCIPLE OF COMITY	8
III. THE TRIBE'S RELIANCE ON THIS COURT'S DECISION IN *SAN CARLOS* IS MISPLACED	9
IV. THE TRIBE'S ARGUMENT THAT THE *GILA RIVER ADJUDICATION* IS A BROKEN PROMISE IS IRRELEVANT AND WRONG	11
CONCLUSION	13

TABLE OF AUTHORITIES

Page

CASES

Arizona v. California, 640 U.S. 605 (1983).....5, 6, 7, 11

Arizona v. San Carlos Apache Tribe of Arizona, 643 U.S. 545 (1983).....3, 4, 9, 10

Colorado River Water Cons. District v. United States, 424 U.S. 800 (1976)..... 6, 9

Gila Valley Irrigation Dist. v. United States, 118 F.2d 507 (9th Cir. 1941)..... 2

Hansberry v. Lee, 311 U.S. 32 (1940)..... 5, 7

Heckman v. United States, 224 U.S. 413 (1912)..... 5

In Re The General Adjudication of all Rights to Use Water in the Gila River System and Source, 127 P.3d 882 (Ariz. 2006).....3, 8, 9

In Re The General Adjudication of All Rights to Use Water in The Gila River System and Source, 35 P.3d 68 (Ariz. 2001)..... 12

In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source, 9 P.3d 1069 (Ariz. 2000)..... 12

In Re The General Adjudication of All Rights to Use Water in The Gila River System and Source, 989 P.2d 739 (Ariz. 1999)..... 12

In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source, 830 P.2d 442 (Ariz. 1992)..... 12

In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source, 857 P.2d 1236 (Ariz. 1993)..... 12

TABLE OF AUTHORITIES – Continued

Page

Nevada v. United States, 463 U.S. 110 (1983).....5, 6, 7, 11

United States v. Gila Valley Irrigation Dist., 117 F.3d 425 (9th Cir. 1997)..... 1

United States v. Gila Valley Irrigation Dist., 31 F.3d 1428 (9th Cir. 1994)..... 1, 2

United States v. Gila Valley Irrigation Dist., 454 F.2d 219 (9th Cir. 1972)..... 2

United States v. Gila Valley Irrigation Dist., 804 F.Supp. 1 (D. Ariz. 1992)..... 2

United States v. Gila Valley Irrigation Dist., 920 F.Supp. 1444 (D. Ariz. 1996)..... 2

United States v. Gila Valley Irrigation Dist., 959 F.2d 242 (9th Cir. 1992)..... 2

United States v. Gila Valley Irrigation Dist., 961 F.2d 1432 (9th Cir. 1992)..... 2

STATUTES

Pub. L. No. 100-512, 102 Stat. 2549.....11

Pub. L. No. 101-628, 104 Stat. 4469, 4480-92..... 12

Pub. L. No. 108-451, 118 Stat. 3478..... 12

Pub. L. No. 95-328, 92 Stat. 409..... 12

Pub. L. No. 99-469, 100 Stat. 1195..... 12

Pub. L. No. 102-575, 106 Stat. 4600..... 4, 12

RULES

Rule 60(b), *Federal Rules of Civil Procedure*..... 8

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Restatement (Second) of Judgments § 78..... 8

STATEMENT OF THE CASE

Phelps Dodge incorporates the Statement of the Case set forth in Phelps Dodge's Conditional Cross-Petition for Writ of Certiorari, No. 06-333. In addition, Phelps Dodge makes the following statement.

1. The *Globe Equity* Litigation

In 1925, the United States on behalf of the San Carlos Apache Tribe (the "Tribe"), the Gila River Indian Community (the "Community"), and the San Carlos Irrigation Project ("SCIP") brought suit in the United States District Court for the District of Arizona to adjudicate the rights of the Tribe, the Community, and SCIP to the waters of the Gila River beginning ten miles east of the Arizona line to the confluence with the Salt River in *United States v. The Gila River Irrigation District, et al.*, Globe Equity 59 (the "*Globe Equity* Litigation"). After years of litigation, a settlement was reached and the *Globe Equity* Court entered a Decree on June 29, 1935 setting out the rights of the parties to the waters of the Gila River (the "Decree" or "*Globe Equity* Decree").[1]

The *Globe Equity* Court retained jurisdiction to enforce the rights granted under the Decree.[2] Indeed, the District Court and the Ninth Circuit have been called upon many times to interpret and enforce the Decree.[3]

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[1] The Decree is set forth in the Tribe's Supplemental Appendix at pp. 103-225.

[2] Article XIII of the Decree; Tribe's Supplemental Appendix at p. 225.

[3] *See, e.g., United States v. Gila Valley Irrigation Dist.*, 117 F.3d 425 (9th Cir. 1997); *United States v. Gila Valley Irrigation Dist.*, 31 F.3d

(Continued on following page)

The Tribe and the Community were not parties in the original *Globe Equity* Litigation, but were represented by the United State as trustee. The Community first attempted to intervene in 1935. That request was denied. The Community was granted permission to intervene in the *Globe Equity* Litigation on May 2, 1983.[4] At that time, the District Court rejected any attempt by the Community to relitigate any issues relating to the Decree, including whether the representation of the Untied States was adequate: "It is too late in the day for GRIC now to complain of its representation back in 1935."[5] The Tribe was granted leave to intervene in the *Globe Equity* Litigation on July 10, 1990.[6] The Tribe specifically limited its intervention to enforcement of the Decree and did not seek to attack the representation of the United States.

2. The State Court *Gila River Adjudication*

In the mid-1970s, water rights claimants filed petitions to initiate general adjudications to determine and prioritize rights to water in the Gila River and its tributaries. *In Re The General Stream Adjudication of All Rights to Use Water in the Gila River System and Source*, W-1, W-2, W-3 and W-4 (consolidated) (the "*Gila River Adjudication*"). As

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1428 (9th Cir. 1994); *United States v. Gila Valley Irrigation Dist.*, 961 F.2d 1432 (9th Cir. 1992); *United States v. Gila Valley Irrigation Dist.*, 959 F.2d 242 (9th Cir. 1992) (unpublished); *United States v. Gila Valley Irrigation Dist.*, 454 F.2d 219 (9th Cir. 1972); *Gila Valley Irrigation Dist. v. United States*, 118 F.2d 507 (9th Cir. 1941); *United States v. Gila Valley Irrigation Dist.*, 920 F. Supp. 1444 (D. Ariz. 1996); *United States v. Gila Valley Irrigation Dist.*, 804 F. Supp. 1 (D. Ariz. 1992).

[4] Appendix F to Tribe's Petition at pp. 212a-220a.

[5] *Id.* at p. 218a.

[6] Appendix O to Tribe's Petition at pp. 304a-306a.

part of the ongoing efforts to adjudicate the water rights of the parties, the Superior Court instituted contested action W1-206 to determine, among other things, the preclusive effect of the *Globe Equity* Decree upon the Tribe.

The Superior Court found that under the principals of claim preclusion, also known as *res judicata*, the Tribe was barred from asserting rights to additional water from the mainstream of the Gila River in excess of the water awarded to the Tribe in the *Globe Equity* Litigation. The court further held that the Tribe could seek water from the tributaries because those rights were not determined in the *Globe Equity* Litigation. The Tribe filed a petition for interlocutory review with the Supreme Court of Arizona. The Arizona Supreme Court accepted review and affirmed the Order of the Superior Court.[7] *In Re The General Adjudication of all Rights to Use Water in the Gila River System and Source,* 127 P.3d 882 (Ariz. 2006) ("*Gila VI*"). The Tribe's Petition arises from this decision.

3. The *San Carlos Apache Tribe v. Arizona* Litigation

In 1979, the Tribe brought suit in the United States District Court seeking to have its water rights adjudicated in that court, rather than in the *Gila River Adjudication*. The District Court stayed the action pending determination of the Tribe's water rights in the *Gila River Adjudication*. The Tribe appealed the decision to the Ninth Circuit which reversed the District Court. This Court accepted Arizona's Petition for Writ of Certiorari and reversed the Ninth Circuit. *Arizona v. San Carlos Apache Tribe of Arizona*, 643 U.S. 545 (1983) ("*San Carlos*"). This Court

[7] Appendix A to the Tribe's Petition at p. 1a.

held that the District Court properly stayed the District Court action.

The *San Carlos* litigation remains stayed pending resolution of the *Gila River Adjudication*. The Tribe has not sought to have the stay lifted nor followed the appellate process from any District Court decision. Although the *San Carlos* decision has nothing to do with the current issues on appeal, the Tribe nevertheless relies heavily upon that decision.

4. The Tribe Has More Water Than Those Water Rights Awarded in The *Globe Equity* Litigation

Throughout its Brief, the Tribe argues that it only has water to irrigate 1,000 acres of land given by the *Globe Equity* Decree. In fact, the geographic scope of the *Globe Equity* Litigation excluded the Salt River and its tributaries, including the Black River.[8] The Black River is the northern border of the San Carlos Apache Reservation. In 1992, Congress enacted the San Carlos Settlement Act of 1992. Pub. L. No. 102-575, 106 Stat. 4600, 4740-53, as amended. Under the Act and the Settlement, the Tribe was awarded 76,445 acre feet of water per year. The Tribe was also given, contrary to its assertion in its Petition, the ability to store water in the San Carlos Reservoir. The Tribe was given significant federal aid for capital projects on the Reservation, and given the rights to groundwater beneath the Reservation.

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[8] Appendix 2 to Phelps Dodge's Conditional Cross-Petition at ¶ 15.

REASONS FOR DENYING THE PETITION

I. THIS COURT HAS TWICE REJECTED INDIAN TRIBES' ALLEGED CLAIMS OF INADEQUATE REPRESENTATION BY THE UNITED STATES IN WATER RIGHTS ADJUDICATIONS

In 1983, this Court decided two cases dealing with the application of claim preclusion on Indian tribes' water rights. *Nevada v. United States*, 463 U.S. 110 (1983); *Arizona v. California*, 640 U.S. 605 (1983) ("*Arizona II*"). In both cases, Indian tribes argued that the United States failed to obtain all of the implied reserved water rights to which the tribes were entitled. In both cases, the tribes argued that the United States failed to adequately represent the interests of the tribes; the tribes argued that, as a result, their claims to additional water rights should not be barred under the doctrine of claim preclusion. This Court rejected the arguments in both cases.

In *Nevada*, this Court held that the tribe was bound by the United States' representation: "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its Courts . . . these wards should themselves be permitted to relitigate the question." *Nevada*, 463 U.S. at 135 (quoting *Heckman v. United States*, 224 U.S. 413, 446 (1912)). The Court also rejected the tribe's argument, like the Tribe's argument here, that its due process rights were violated under *Hansberry v. Lee*, 311 U.S. 32 (1940). *Id.* at 135, n. 15. In distinguishing *Hansberry*, the Court held that "the Government stands in a different position than a private fiduciary where Congress has decreed that the Government must represent more than one interest. When the Government performs such

duties it does not by that reason alone compromise its obligation to any of the interests involved." *Id.*

In *Arizona II*, the Court again rejected various tribes' arguments that a conflict of the United States' interests provided for a basis for the tribes to relitigate their water rights claims:

> We find no merit in the Tribes' contention that the United States' representation of their interests was inadequate whether because of a claimed conflict of interests arising from the government's interest in serving water rights for other federal property, or otherwise. The United States often represents varied interests in litigation involving water rights, particularly given the large extent and variety of federal land holdings in the West. *Colorado River Water Cons. District v. United States*, 424 U.S.[800,] 805 [(1976)]. The Government's representation of these varied interests does not deprive our decisions of finality.

Arizona II, 640 U.S. at 626-27.

Indeed, in both cases, this Court suggested that a tribe's remedy for alleged breach of the United States' duty to adequately represent the tribe was a suit by the tribe against the United States. *Id.* at 627, n. 20 ("If these cases are at all relevant, it is to suggest that in an appropriate case the Tribes' remedy for inadequate representation by the government may lie in the Court of Claims."); *Nevada*, 463 U.S. at 135, n. 14 ("We, of course, do not pass judgment on the quality of representation that the Tribe received. In 1951 the Tribe sued the Government before the Indian Claims Commission for damages, basing its claim of liability on the Tribe's receipt of less water for its fishery than it was entitled to.").

The Tribe, here, attempts to distinguish *Arizona II* because the Court found as a factual matter that the tribes failed to show inadequate representation. [Petition at 24.] Yet, the Tribe overlooks the undisputed facts in *Arizona II* that the United States failed to present evidence to secure substantial water rights for omitted lands. This Court found that the United States' undisputed failure to secure water rights for the omitted lands did not establish a breach of the United States' duty to adequately represent the tribes:

> A breach of the United States' duty to represent the Tribes' interest *is not demonstrated* merely *by showing that the government erred* in its calculation of irrigable acreage, *whether by oversight or,* as viewed in retrospect, *by an unnecessarily cautious litigation strategy.*

Arizona II, 640 U.S. at p. 628, n. 21 (emphasis added).

The Tribe attempts to distinguish *Nevada* because it argues adequacy of representation was not raised on appeal. On the contrary, this Court rejected the tribe's contention that under *Hansberry*, the United States had interests that impermissibly conflicted with the tribe's interests that would allow the tribe to relitigate its water rights claims. *Nevada,* 463 U.S. at 135, n. 15. This Court recognized that the United States failed to seek to establish a reserved water right for the tribe's fishery in Pyramid Lake and this failure did not amount to such a breach of the government's duty to adequately represent the tribe so as to allow relitigation of that water right in the subsequent proceeding: the District Court found that decisions made by the Interior Department exercising their congressionally delegated duties and responsibility "'resulted in the extinguishment of the alleged fishery purpose water rights . . .'"

Id. Nevertheless, this Court found that this "finding reflects the nature of a democratic government that is charged with more than one responsibility; it does not describe conduct that would deprive the United States of the authority to conduct litigation on behalf of diverse interests." *Id.*

In both cases, contrary to the argument of the Tribe, this Court rejected the tribes' attempts to relitigate water rights claims where the undisputed facts showed the United States failed to obtain significant water rights on behalf of tribes in the prior proceedings.

II. THE ARIZONA SUPREME COURT PROPERLY APPLIED THE PRINCIPLE OF COMITY

Although the Arizona Supreme Court recognized that this Court has consistently rejected arguments by Indian tribes that the United States has inadequately represented the tribes in prior proceedings, the Arizona Court refused to address the Tribe's inadequate representation claim under principles of comity. The Arizona Court found that the Tribe should have brought the issue to the attention of the District Court in the *Globe Equity* Litigation. *Gila VI*, 127 P.3d at 901.

The Arizona Supreme Court, relying upon the Restatement (Second) of Judgments § 78, found that "relief from a judgment 'must be obtained by means of a motion for that purpose in the court that rendered the judgment unless relief may be obtained more fully, conveniently, or appropriately by some other procedure.'" *Id.* at p. 898 ¶ 62. The Arizona Court recognized that the proper procedure would be a motion under Rule 60(b), *Federal Rules of Civil Procedure,* in the *Globe Equity* Court. The Arizona

Court also recognized that the Tribe could have sought to attack the United States' representation when it intervened in the *Globe Equity* Litigation in 1990, but chose not to do so:

> [The Tribe] could have sought to attack the Decree in its 1990 motion to intervene and then sought federal appellate review from any denial thereof. Had it done so, the federal courts could have conclusively addressed the issue. If we were today to consider the Tribe's privity arguments, we would be in effect rewarding its strategic choice to withhold making those arguments in the court that issued the Decree in order to seek a more favorable forum here. The doctrine of comity requires a different result. We therefore decline to consider the Tribe's attack on the Decree on the basis of absence of privity.

Id. at p. 901 ¶ 73 (footnotes omitted). The Tribe's entire Petition is based on its argument that this ruling conflicts with this Court's holding in *San Carlos*.

III. THE TRIBE'S RELIANCE ON THIS COURT'S DECISION IN *SAN CARLOS* IS MISPLACED

The gravamen of the Tribe's Petition is that "[u]nless reversed, the decision of the Arizona Supreme Court would send the Tribe back to federal court, and thereby 'work the very mischief that [this Court's] decision in *Colorado River* sought to avoid.'" [Petition at p. 16, quoting *San Carlos*, 643 U.S. at 855.] The Tribe's reliance on this Court's decision in *San Carlos* is misplaced.

The Arizona Supreme Court did not send the Tribe back to federal court in the *San Carlos* action, an action stayed pending resolution of the Tribe's water rights

claims in the *Gila River Adjudication*. Instead, the Arizona Supreme Court held that the Tribe's arguments regarding the United States' alleged inadequate representation should have been brought before the *Globe Equity* Court, the court with continuing jurisdiction over the *Globe Equity* Decree. The *San Carlos* decision in no way stands for the proposition that a challenge to the seventy-year-old consent Decree entered by the United States District Court that has expressly retained jurisdiction over the Decree must be raised, not in that District Court, but in the *Gila River Adjudication*.

The entire point the Tribe misses throughout its Petition is that the Tribe made a strategic decision not to raise its inadequate representation argument when it intervened in the *Globe Equity* Litigation in 1990. The Tribe could have done so but chose not to, presumably because the *Globe Equity* Court had rejected the Community's attempt to do so in 1983 when the Community intervened in the *Globe Equity* proceeding.[9] If the District Court then ruled against the Tribe, as it had done against the Community, the Tribe could have appealed from that ruling.

---

[9] The Tribe, in footnote 19 of its Petition, describes how the Community's claims of inadequate representation were "completely different than" the Tribe's when the Community intervened in the *Globe Equity* Litigation. The Tribe explains how the Community sought to intervene in 1935 before the Decree was entered, how that motion was denied, and how the Community failed to appeal that decision in 1935. The Tribe argues that these facts guided the *Globe Equity* Court's decision in 1983. Yet even with these factual differences, the Tribe chose to forego its opportunity to make these arguments to the *Globe Equity* Court. When the Tribe decided in 1990 to intervene only as to the enforcement proceedings, it was the Tribe's strategic decision to not raise these issues with the *Globe Equity* Court.

Thus, the Tribe has not been "denied due process"[10] and Arizona has not "broken its promise." Instead the Tribe made a strategic decision to forego a direct attack on the United States' representation in the very case in which the Tribe alleges that representation was inadequate. The Tribe opted to take its chances on a collateral attack of the *Globe Equity* Decree in the state court general water adjudication.

IV. THE TRIBE'S ARGUMENT THAT THE *GILA RIVER ADJUDICATION* IS A BROKEN PROMISE IS IRRELEVANT AND WRONG

In the last section of its Petition, the Tribe argues that the *Gila River Adjudication* is not moving quickly enough to suit the Tribe. This argument is simply irrelevant to the preclusive effect of the *Globe Equity* Decree on the Tribe – the issue reviewed by the Arizona Supreme Court from which the Tribe brings its Petition. The rate at which the *Gila River Adjudication* has progressed has nothing to do with the issues raised by the Tribe.

Moreover, the Tribe is simply wrong that nothing has been accomplished. Many water rights claims by Indian tribes relating to Arizona waters have been settled:

Salt River Pima Reservation	Pub. L. No. 100-512, 102 Stat. 2549;

[10] The Tribe's argument that it has not had its day in court because the Arizona Supreme Court's decision violates the Tribe's due process is without merit. These same arguments were rejected by this Court in *Nevada* and *Arizona II*. *Nevada*, 463 U.S. at 135 and at n. 14; *Arizona II*, 640 U.S. at 626-27.

Fort McDowell Indian Reservation Pima	Pub. L. No. 101-628, 104 Stat. 4469, 4480-92;
Ak Chin Indian Reservation	Pub. L. No. 95-328, 92 Stat. 409;
San Carlos Apache Reservation to claims on the Salt River	Pub. L. No. 102-575, 106 Stat. 4600, 4740-53;
Gila River Indian Community	Pub. L. No. 108-451, 118 Stat. 3478; and
The Tohono O'odham Reservation	Pub. L. No. 99-469, 100 Stat. 1195.

Moreover, the Arizona Supreme Court has addressed many other overarching issues affecting the entire adjudication. *See, e.g., In Re The General Adjudication of All Rights to Use Water in The Gila River System and Source*, 35 P.3d 68 (Ariz. 2001) ("*Gila V*"); *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 9 P.3d 1069 (Ariz. 2000) ("*Gila IV*"), cert. denied, 530 U.S. 1250 (2000); *In Re The General Adjudication of All Rights to Use Water in The Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) ("*Gila III*"); *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 857 P.2d 1236 (Ariz. 1993) ("*Gila II*"); *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 830 P.2d 442 (Ariz. 1992) ("*Gila I*").

Finally, the fact that the legislature has failed to fund the Department of Water Resources at a level that the Tribe feels the legislature should have is a matter that the Tribe should take up with the legislature. It is not a sound basis for this Court to rely upon in reversing the Arizona Supreme Court's decision.

CONCLUSION

For the foregoing reasons, Phelps Dodge respectfully requests that the San Carlos Apache Tribe's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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(9)

No. 06-173

FILED
DEC 19 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

REPLY BRIEF OF PETITIONER TO ASARCO LLC

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TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES iii

TABLE OF APPENDICES v

PETITIONER'S REPLY BRIEF TO ASARCO 1

A. Introduction 1

B. The Apache Tribe is Entitled to Enforce the *Globe Equity Decree* and Claim Its Additional Water Rights in the Adjudication 2

C. Prior Rulings and Cases Did Not Decide the Tribe's Ability to Claim Water Rights to the Gila River Mainstream 3

1. Globe Equity No. 59 3

2. *San Carlos Apache Tribe v. United States* 4

D. The Tribe Did Not Make a Strategic Choice Concerning Its Claims to the Gila River Mainstream in 1990 5

E. The Tribes are Entitled to Challenge Prior Decrees in the Arizona Stream Adjudication 6

F. The Tribe's Water Rights Claims Are Appropriately Brought Before the State Adjudication Court 8

Contents

Page

G. The Doctrine of Prior Exclusive Administrative Jurisdiction Does Not Apply to This Case 9

CONCLUSION 10

TABLE OF CITED AUTHORITIES

Cases	Page
Arizona v. California, 460 U.S. 605 (1983)	8
Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983)	1, 8, 9
Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)	9
Federated Dep't Stores, Inc. V. Moitie, 452 U.S. 394 (1981)	7
Lapin v. Shulton, 333 F.2d 169 (9th Cir. 1964)	7
Nevada v. United States, 463 U.S. 110 (1983)	8, 9
Plotner v. AT&T Corp., 224 F.3d 1161 (10th Cir. 2000)	7
San Carlos Apache Tribe v. State of Arizona, 721 F.2d 1187 (9th Cir. 1983)	1
San Carlos Apache Tribe v. United States, 272 F.Supp. 2d 860 (D. Ariz. 2003), *aff'd in part*, 417 F.3d 1091 (9th Cir. 2005), *aff'd in part*, 144 Fed. Appx. 635 (9th Cir. 2005)	5
State Eng'r v. South Fork Band, 339 F.3d 804 (9th Cir. 2003)	9
Stephenson v. Dow Chemical Co., 273 F.3d 249 (2001)	7

Cited Authorities

Page

United States v. Alpine Land & Reservoir Co., 174 F.3d 1007 (9th Cir. 1999) 9

United States v. Gila Valley Irrig. Dist., 804 F.Supp. 1 (D. Ariz. 1992), *aff'd in part and rev'd in part*, 31 F.3d 1428 (9th Cir. 1994) 3, 4

United States v. Gila Valley Irrig. Dist., 920 F. Supp. 1444 (D. Ariz. 1996) 3

United States v. Superior Court, 144 Ariz. 265, 697 P.2d 658 (1985) 1

Statutes

McCarran Amendment, 43 U.S.C. § 666 .....1, 8, 10

Other Authorities

Restatement (Second) Judgments, § 78 7

TABLE OF APPENDICES

Page

Appendix A — Response Of The United States To The Order Of February 23, 1981 ..... 1a

Appendix B — Order Of The Superior Court Of Pinal County, State Of Arizona Dated February 23, 1981 ..... 5a

Appendix C — Order Of The Superior Court Of Maricopa County, State Of Arizona Dated March 24, 1982 ..... 10a

Appendix D — Order Of The Superior Court Of Maricopa County, State Of Arizona Dated March 1, 1982 ..... 15a

Appendix E — Order Of The Superior Court Of Maricopa County, State Of Arizona Dated March 1, 1982 ..... 19a

PETITIONER'S REPLY BRIEF TO ASARCO

Pursuant to Rule 16.6 of the Rules of the Supreme Court of the United States, Petitioner, San Carlos Apache Tribe ("Apache Tribe" or "Tribe"), replies to ASARCO, LLC's Brief in Opposition to the Petition for Writ of Certiorari to the Arizona Supreme Court ("ASARCO Resp.").[1]

A. Introduction

In 1985, following this Court's decision in *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983), the Ninth Circuit Court decision in *San Carlos Apache Tribe v. State of Arizona*, 721 F.2d 1187 (9th Cir. 1983) and the Arizona Supreme Court decision in *United States v. Superior Court*, 144 Ariz. 265, 697 P.2d 658 (1985), the Apache Tribe, and the United States as its trustee, filed claims in the Arizona general stream adjudication[2] for all rights to the Gila River mainstream and its tributaries necessary to fulfill the purposes of the San Carlos Apache Reservation ("Reservation") as a permanent Tribal homeland for the Tribe.

Both the Tribe and the United States made it clear in all previous proceedings that the United States had additional claims to the mainstream of the Gila River to fulfill the purposes of the Reservation and that the Tribe had claims of its own that would be filed once the status and scope of the state proceeding was clarified as to the McCarran Amendment.[3]

1. The Apache Tribe simultaneously files (1) a Consolidated Reply to the Response in Opposition filed by the United States ("U.S. Reply"); and (2) a Consolidated Reply to the Responses in Opposition filed by Phelps Dodge Corporation, the City of Safford, and the Gila Valley Irrigation District ("Consolidated Reply").

2. The Arizona general stream adjudication of the Gila River system and source is a McCarran Amendment proceeding, 43 U.S.C. § 666.

3. *See* Joint Appendix Vol. I in No. 81-2147, *Arizona v. San Carlos Apache Tribe* (October Term, 1982) at 206 (Transcript of proceedings before Arizona adjudication court on February 23, 1981) and Response of the United States to the Arizona general adjudication court's Order of February 23, 1981, filed February 25, 1981, Appendix to Reply to ASARCO ("Reply App.") at ___.

Here, ASARCO and others assert that 5 years later in 1990, the Tribe made a "strategic" decision "to withhold making" its claims in the *Globe Equity Court* when it filed its motion to intervene and complaint in intervention in the ongoing *Globe Equity Decree* ("*Decree*") enforcement action.[4] Further, ASARCO and others assert that the *Globe Equity Court* ruled against the Tribe when the Tribe purportedly attempted to "expand its rights" under the Decree to establish "continuous flow"[5] to the Gila River, and when the Tribe sued to require the United States to retain "stored water" owned by the United States in the San Carlos Reservoir.[6] ASARCO is wrong.[7]

B. The Apache Tribe is Entitled to Enforce the *Globe Equity Decree* and Claim Its Additional Water Rights in the Adjudication

ASARCO claims that the Tribe cannot make it defense of inadequate representation in the Arizona stream adjudication and also assert the water right of the United States to 6,000 acre-feet of water for the San Carlos Apache Reservation.[8] ASARCO inappropriately merges the **alternative arguments** presented by the Tribe in the Arizona stream adjudication as to why the Tribe could claim additional water rights to the Gila River mainstream. The Tribe first argued, that in construing the conduct of the United States in good faith, the right obtained by the United States in the *Globe Equity Decree* was not the full extent of the water rights of the Tribe. In the alternative, the Tribe argued that if the Arizona stream adjudication court determined that the *Globe Equity Decree* was a negotiated settlement of all of the Tribe's water rights claims to the Gila River mainstream (which it did), the United States so grossly

4. *See* Brief of ASARCO in Opposition ("ASARCO Resp.") at pp. 6-7.

5. ASARCO Resp. at 2.

6. ASARCO at 3-4.

7. ASARCO also mischaracterization the Apache Tribe's water supply. This is briefed in the Tribe's Response in Opposition to Phelps Dodge Cross-Petition at 13-15 and will not be repeated here.

8. ASARCO Resp. at 5, 18.

and inadequately represented the Tribe as to destroy the element of privity required for the Decree to have *res judicata* effect. The Tribe is entitled, as beneficiary of the waters held by the United States under the Decree, to enforce that Decree.

C. Prior Rulings and Cases Did Not Decide the Tribe's Ability to Claim Water Rights to the Gila River Mainstream

1. Globe Equity No. 59

ASARCO cites *United States v. Gila Valley Irrig. Dist.*, 804 F.Supp. 1, 10 (D. Ariz. 1992), *aff'd in part and rev'd in part*, 31 F.3d 1428 (9th Cir. 1994), for the proposition that the Tribe sought to "expand" the water rights obtained by the United States for the Tribe under the *Globe Equity Decree*.[9] This is incorrect.

The non-Indian water users upstream from the Reservation had developed the practice of diverting the entire mainstream of the Gila River into their canals, and rediverting the return flow so that the natural flow Gila River mainstream water for Apache irrigation was unreliable and so degraded in quality as to be described as an agricultural drain by the *Globe Equity Court*.[10]

In 1990, supported by the United States, the Tribe sought to establish a minimum flow in the Gila mainstream so that it could reliably receive 6,000 acre feet of water decreed to the United States under the *Globe Equity Decree* at an appropriate time with adequate quality and quantity to allow the Tribe to grow its traditional crops. The United States' expert had testified that a live stream was necessary. The Court declined to require a live stream be maintained above the Reservation.[11] Instead, it entered a water quality injunction.[12]

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9. ASARCO Resp. at 2.

10. *See United States v. Gila Valley Irrig. Dist. ("U.S. v. GVID")*, 920 F. Supp. 1444, 1448-1449 (D. Ariz. 1996).

11. *United States v. Gila Valley Irrig. Dist.*, 804 F. Supp. 1, 10 (D. Ariz. 1992), *aff'd in part, rev'd in part*, 31 F.3d 1428 (9th Cir. 1994).

12. *U.S. v. GVID*, 920 F. Supp. at 1454-1455.

When the *Globe Equity Court* stated that "the Decree was intended as a complete statement of the rights of the various parties to the waters of the Gila River,"[13] it was not addressing any additional claims of the Apache Tribe to waters of the Gila River, nor was it asked by the Apache Tribe to do so. It simply decided that a "continuous flow" was no provided by the Decree. The parties to the Decree and the *Globe Equity Court* were well aware that the water rights claims of the Tribe to the Gila River mainstream were pending in the Arizona stream adjudication.[14]

2. *San Carlos Apache Tribe v. United States*

When the United States drastically drained or lowered San Carlos Reservoir, it caused damage to Apache graves, threatened and endangered fish and birds dependent on the Lake and threatened public health. The Tribe filed suit in the *Globe Equity Court* to require the United States to retain a minimum pool of "stored water" which the United States owned in the Reservoir to comply with federal law. The *Globe Equity Court* did not consider the question of whether federal law required the United States to prevent the types of problems alleged by the Tribe as an enforcement action under the Decree and dismissed the complaint without prejudice for lack of jurisdiction under Article XIII of the Decree.[15] In dismissing the complaint, the *Globe Equity Court* stated,

> The complaint **does not state a claim based on water rights granted by the Gila River Decree**. The Court, therefore, declines jurisdiction to hear this matter under Globe Equity No. 59 and dismisses the complaint without prejudice. If it appears that the Decree may

13. *U.S. v. GVID*, 804 F. Supp. at 10.

14. *See* Appendix of ASARCO to Response Brief in Opposition ("ASARCO App.") at 1-2. ("However, the Apache Tribe has been and will continue to litigate its claims . . . in State Court in the State of Arizona 'Gila River Adjudication' . . . which is now pending in the Mariocopa Superior Court.").

15. *See* Order of the United States District Court for the District of Arizona dated May 10, 1999, Appendix to Apache Tribe's Petition ("App.") at 310a-311a (emphasis added).

need to be modified based on resolution of these claims by another court, the parties may petition this Court at that time.[16]

The Tribe was not seeking additional rights for itself under the Decree, but rather was attempting to require the United States to use its own water in the Reservoir located on the San Carlos Reservation to protect the wildlife, the Apache graves and the public health under federal law.

Although the case was refiled in federal district court, it was not refiled in the *Globe Equity* case. The deciding court found that the purpose for which Congress appropriated money to construct the Coolidge Dam, was to capture flood water to irrigate the lands of the United States' SCIP project downstream, which it ruled was not subject to cultural and environmental laws enacted later by Congress.[17]

ASARCO mischaracterizes the Tribe's suit against the United States as the Tribe attempting to secure more water for its own uses, in an effort to escape the effect of the *Globe Equity Decree*. This is simply wrong. The *Globe Equity Court* ruled that it would not hear any of the Tribe's additional claims to the mainstream of the Gila River, but rather, that the Tribe must make those claims in another forum.[18]

D. The Tribe Did Not Make a Strategic Choice Concerning Its Claims to the Gila River Mainstream in 1990

By reference to a 1983 ruling by the *Globe Equity Court* against the Gila River Indian Community ("GRIC"), ASARCO argues that the *Globe Equity Court* had ruled that the Apaches could not file actions in that court for inadequate representation by the United States in 1935.[19] ASARCO is wrong.

16. *Id.*

17. *See San Carlos Apache Tribe v. United States*, 272 F.Supp. 2d 860 (D. Ariz. 2003), *aff'd in part*, 417 F.3d 1091 (9th Cir. 2005).

18. This would be in accordance with the requirements of *Arizona, et al. v. San Carlos Apache Tribe*, 463 U.S. 545; 103 S. Ct. 3201 (1983) (*"Arizona v. San Carlos"*), that the water rights claims of the Tribe are to be made in the State court adjudication.

19. ASARCO Resp. at 6.

Before the entry of the Decree in 1935, GRIC had filed a motion to intervene on its own behalf in the *Globe Equity* case. The Court denied GRIC's motion. The 1983 Court found that GRIC had failed to file a timely appeal to that denial 48 years earlier.

The *Globe Equity Court's* 1983 ruling was based upon GRIC's specific factual circumstances, and not those of the Tribe. By holding that the 1983 ruling applied to the Tribe, the Arizona Supreme Court determined the *res judicata* effect of the *Globe Equity Decree*, but denied the Tribe the right to defend against it.[20] This was based upon a 1983 court decision that had neither applied to the Tribe, nor to which the Tribe was a party. This is a straightforward denial of due process.

E. The Tribes are Entitled to Challenge Prior Decrees in the Arizona Stream Adjudication

In *Arizona v. San Carlos*, the tribes raised the concern before this Court that requiring inclusion of prior decrees in the final comprehensive adjudication of the water rights of the Gila River system and source under Arizona Revised Statute ("A.R.S.") 45-257(B)(1) would, *inter alia*, deprive the tribes of due process as to such prior decrees. The State parties replied to this Court that "as is true of western water rights adjudications generally, this statute requires the state court to 'accept' determinations of water rights in prior decrees as *prima facie* evidence, **which can be rebutted** by evidence adduced by persons who were not parties to the prior decree."[21] Respondents retreat from this interpretation here.

ASARCO cites certain cases for its proposition that the Arizona stream adjudication court must honor the *Globe Equity Decree* unless the *Globe Equity Court* or another federal appellate court reverses or modifies the effect of the Decree.[22]

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20. *See* U.S. Response at 11-13 and Tribe's Motion for Reconsideration to Arizona Supreme Court dated February 24, 2006 (Supp. App. at 14-16), for further discussion.

21. Reply Brief for Petitioners in No. 81-2147, *Arizona v. San Carlos Apache Tribe*, p. 19, n. 29.

22. ASARCO Resp. at 11-14.

However, the cases by cited by ASARCO confirm that the *Decree* would be honored by another court **only** when the elements of res judicata were found to exist by the reviewing court. *See e.g. Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) ("A final judgment on the merits of an action precludes **the parties or their privies** from relitigating issues that were or could have been raised in that action."); *Plotner* at 1166 ("**Finding the additional elements of res judicata present** and therefore concluding that the doctrine of res judicata barred collateral attack on Judge Lindsey's decision.").

Respondents have the burden of proof when using *res judicata* as an affirmative defense against the Tribe. The cases cited by ASARCO support the Tribe's position that the Arizona stream adjudication court should have required them to meet their burden to prove all the elements of *res judicata*, and to permit the Tribe under fundamental notions of due process, the opportunity to present its arguments regarding the lack of these elements.[23]

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23. ASARCO's reference to *Stephenson v. Dow Chemical Co.*, 273 F.3d 249, 259 (2001), makes it clear that a person that is inadequately represented in a prior action may assert claims in a subsequent action and thereby provide a defense to *res judicata* of the previous action by demonstrating a lack of privity. "If plaintiffs were not proper parties to that judgment . . . res judicata cannot defeat their claims." *Id.* The plaintiffs making claims in *Stephenson* were not referred back to the court that entered the original judgment to determine if there was adequate representation as the Arizona Supreme Court inappropriately did in this case. *See also, Lapin v. Shulton*, 333 F.2d 169, 172 (9th Cir. 1964) ("considerations of comity and orderly administration of justice demand that the nonrendering court should decline jurisdiction of such an action and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there."). *See also, Restatement (Second) Judgments*, § 78, which provides that "[r]elief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment unless relief may be obtained more fully, conveniently, or appropriately by some other procedure. [Emphasis added]. In this case, relief can only be accorded in the State stream adjudication. The United States agrees that the *Globe Equity Court* could not provide such relief. *See* U.S. Resp. at 13.

F. The Tribe's Water Rights Claims Are Appropriately Brought Before the State Adjudication Court

In *Arizona v. San Carlos*, the United States suggested that separate federal court adjudications for the tribes would be more efficient and would be incorporated into the Arizona stream adjudication under Arizona law. The State petitioners disagreed.

> First, it stands in open contradiction to this Court's holding that 'the McCarran Amendment bespeaks a policy that recognizes the availability of comprehensive state systems for adjudication of water rights as the means for achieving these goals [i.e., 'the avoidance of piecemeal adjudication of water rights in a river system']. Though obstensibly seeking a 'clearer and more generalized rule', the United States actually seeks to avoid the clear holding of *Colorado River*. The government's admission that its proposal will result in 'some piecemealing' of water rights adjudication is directly contrary to the McCarran Amendment's preference for comprehensive adjudication **of all conflicting water rights** in the 'elaborate procedures for allocation of water and adjudication of conflicting claims to that resource' that 'several Southwestern States have established. . .'[24]

Both Respondents and the Arizona Supreme Court seem to retreat from this position.

ASARCO asserts that the Tribe's additional water rights claims to the Gila River mainstream belong before the *Globe Equity Court*, as the claims were brought by other tribes in *Arizona v. California*, 460 U.S. 605 (1983), and *Nevada v. United States*, 463 U.S. 110, 120, 103 S.Ct. 2906 (1983).[25] These cases do not support ASARCO. First, *Arizona v. California* is an interstate stream adjudication in which this Court has original jurisdiction. The tribes in that case had no other forum with the

24. Reply Brief for Petitioners in No. 81-2147, *Arizona v. San Carlos Apache Tribe*, p. 14-17 [internal citations omitted] [emphasis added].

25. ASARCO Resp. at 15.

jurisdiction to entertain or adjudicate their claims to the Colorado River. Second, the additional water rights claims of the Pyramid Lake Paiute Tribe were brought before the Orr Ditch court in *Nevada*, because that court **was** the general adjudication of all rights to the Truckee River and its tributaries.[26] There was no state McCarran adjudication in these cases where the tribes were required to file their water rights claims. For the Apache Tribe, this Court has ruled that the adjudication of all of its rights to the Gila River system and source must be in the Arizona stream adjudication.[27]

G. The Doctrine of Prior Exclusive Administrative Jurisdiction Does Not Apply to This Case

ASARCO cites to *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), *State Eng'r v. South Fork Band*, 339 F.3d 804 (9th Cir. 2003), and *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007 (9th Cir. 1999),[28] for the proposition that the *Globe Equity Court* has prior exclusive jurisdiction regarding claims to the Gila River mainstream.[29] These cases do not support ASARCO.

In the above cited cases, the courts were addressing the ongoing enforcement and administration jurisdiction of the courts that entered prior decrees. *See South Fork Band* at 813 ("the questions presented in *Colorado River* only 'concern[ed] the effect of the McCarran Amendment upon the jurisdiction of the federal district courts ... over suits for *determination* of

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26. *Id.* at 120. ("The District Court then found that the *Orr Ditch* litigation 'was intended by all concerned, lawyers, litigants and judges, as a general all inclusive water adjudication suit which sought to adjudicate all rights and claims in and to the waters of the Truckee ... and required all parties to fully set up their respective water right claims.'") (internal citation omitted).

27. *See Arizona v. San Carlos.*

28. For questions related to the administration of the *Globe Equity Decree*, under the principles established by *Alpine Land & Reservoir Co.* and *South Fork Band*, the *Globe Equity Court* is clearly the appropriate forum.

29. ASARCO Resp. at 16-17.

water rights brought by the United States.' That is a question of *adjudication*. In contrast, the question here is one of *administration*.") (internal quotations omitted). Here, in contrast, the Arizona stream adjudication is not addressing exclusive jurisdiction for enforcement or administration of prior decrees. Instead, the Arizona stream adjudication is addressing **all** of the Tribe's water rights claims under the McCarran Amendment.

CONCLUSION

The Arizona stream adjudication must apply federal law and provide the Tribe with the due process right to defend its water rights claims.

For these reasons, the San Carlos Apache Tribe respectfully requests that this Court grant its Petition and issue a writ of certiorari as to Issue 1 and Issue 2 to the Arizona Supreme Court on the decision below.

Respectfully submitted,

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APPENDIX

APPENDIX A — RESPONSE OF THE UNITED STATES TO THE ORDER OF FEBRUARY 23, 1981

IN THE SUPERIOR COURT
OF
MARICOPA COUNTY STATE OP ARIZONA

NO. W-1

IN RE: GENERAL ADJUDICATION OF THE RIGHT TO USE WATER IN THE SALT RIVER WATERSHED ABOVE GRANITE REEF DAM, EXCLUDING THE VERDE RIVER TRIBUTARY

RESPONSE OF THE UNITED STATES
TO THE ORDER OF FEBRUARY 23, 1981

The United States files this response to this court's order of February 23, 1981, which required the United States to submit a list of "agencies, beneficiaries, and others bearing [a] relationship to the United States" for which the United States would ultimately file a claim in this proceeding.

The United States, by filing this document does not concede that this court has jurisdiction over the United States, its agencies, beneficiaries, or others bearing a relationship to the United States, since this action may well not conform to the requirements of 43 U.S.C. 666, The McCarran Amendment. The United States would also point out that the doctrine of tribal sovereign immunity, as explicated in the case of *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978), would oust this court of jurisdiction over the Indian tribes listed herein.

Appendix A

The United States is still troubled by the scope of this proceeding. There has been no definitive statement by petitioner or the State of Arizona concerning what geographic area and what interests in water – surface and subsurface – are intended to be adjudicated herein. Until such a definitive statement is made, the United States is powerless to challenge the jurisdiction of the court, since we cannot assert that this is *not* a general adjudication until we know what is to be adjudicated.

Given these uncertainties, the United States supplies the following list of federal agencies and Indian tribes for which it may file claims in the proceeding:

Federal Agencies

United States Department of the Interior

1. Bureau of Land Management

2. Water and Power Resources Service

3. National Park Service

4. Fish and Wildlife Service Department of the Defense

1. United States Air Force

2. United States Army Department of Agriculture

1. National Forest Service Indian Reservations

Appendix A

1. San Carlos Apache Indian Reservation

2. White Mountain Apache Indian Reservation

3. Tonto Apache Indian Reservation

4. Ft. McDowell Indian Reservation

5. Yavapai – Prescott Indian Reservation

6. Salt River Indian Reservation

7. Gila River Indian Reservation

8. Gila Bend Papago Reservation

9. Ak-Chin Pima-Maricopa Indian Reservation

10. Camp Verde Indian Reservation

Depending upon the geographic scope of these proceedings, and depending upon the interests to be adjudicated herein, the United States may or may not make claims on behalf of all the entities listed above.

The United States will file claims for the Indian Reservations listed for the United States' legal interest as a trustee of the water rights of the respective reservations. The Indian tribes have seperate equitable interests in the water rights of their reservations. The United States believes that certain of the Indian tribes may file claims in this proceeding which may differ from the claims that the United States will make for its interest as trustee.

Appendix A

Respectfully submitted,

s/ Steven E. Carroll
STEVEN E. CARROLL
Attorney, Department of Justice
Land and Natural Resources Division
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-2068

APPENDIX B — ORDER OF THE SUPERIOR COURT OF PINAL COUNTY, STATE OF ARIZONA DATED FEBRUARY 23, 1981

Div.: 22

Date: February 23, 1981

Judge or Commissioner: HON. STANLEY Z. GOODFARB

Clerk: WILSON D. PALMER

Deputy: S. Sanders

IN THE MATTER OF THE DETERMINATION OF CONFLICTING RIGHTS TO THE USE OF WATER FROM THE GILA RIVER, BELOW ITS CONFLUENCE WITH THE SAN FRANCISCO RIVER, AND THE TRIBUTARIES OF THE GILA RIVER, INCLUDING THE SAN FRANCISCO RIVER, CHASE CREEK AND EAGLE CREEK

George F. Senner

Ralph E. Hunsaker

Russell Kolsrud — Atty. General

M. Byron Lewis

William Stephens

Steven E. Carroll
Dept. of Justice
10th & Penn. Ave. N.W.
Washington, D.C. 20530

Appendix B

Joseph Sparks

Richard Wilks

Z. Simpson Cox

John S. Schaper

Willima H. Swan

Tom Galbraith

Robert C. Brauchli

John Weldon

Al Sharago

William H. Veeder
818 - 18th St. N.W.
Washington, D.C. 20006

Water Rights Division
222 N. Central Ave. Suite 800
Phoenix, AZ 85004

Clerk of the Superior Court
Pinal County

Clerk of the Superior Court
Maricopa County —
Lyndon Bolt

8.55 a.m. This is the time set for the hearing on all pending motions in cases, W-1, W-2, and WC-1. Mr. Hunsaker, Mr. Carroll, Mr. Swan, Mr. Schaper, Mr. Galbraith, Mr. Stephens, Mr. Weldon, Mr. Shrago, Mr.

Appendix B

Kolsrud, Mr. Jackson, Mr. Veeder, Mr. Sparks, Mr. Siler and Mr. Brauchli appear.

Robert Ferrara, Court Reporter, is present.

The first motion heard was the United States of America's Motion for an Extension of Time. Mr. Carroll and Mr. Kolsrud set forth their positions.

IT IS ORDERED granting the U.S.A.'s Motion for Extension of Time. The time for filing of claims by U.S. agencies, beneficiaries and others bearing relationship to the U.S. will be given until January 4, 1982 to file their claims. However, by June 1, 1981, the U.S. for and in behalf of its agencies, beneficiaries and others whom it appears for as trustee or such persons, parties or tribes for whom the Department of Justice of the United States of America has appeared but who desire to epresent themselves shall file a notice of their appearance in this Court and a notice of intention to file a claim by January 4, 1982. Their claims will not have to be filed until January 4, 1982. Failure to file such a notice and intention to file by June 1, 1981 will close off rights to be a claimant in this case.

FURTHER ORDERED that Mr. Carroll with the input from Mr. Sparks will prepare and submit an order to that affect to this Court for approval, settlement and signature.

Mr. William Veeder specifically advises the Court of his Presence the presence of Robert C. Brauchli and Ronny Lupe, chairman of White Mountain Apache Tribe and that it wishes this Court to be aware that such tribe will not appear and it

does not watt the Department of Justice to appear for it as it believes this Court is without jurisdiction. The Court advises Mr. Veeder, Brauchli and Lupe that they could appear and reserve the issue of jurisdiction and not run the risk of what non-appearance could mean. The Court further advises that they should reconsider and have until June 1, 1981 to appear. If they fail to appear by then, the Court will not be sympathetic to allowing them in later if and when its jurisdiction is upheld and will deem their failure to file will foreclose the tribe and all its members' rights.

Mr. Don Maughan speaks with regard to the status of this matter and the program to proceed with these cases with all deliberate speed.

IT IS ORDERED that Mr. Hunsaker prepare such orders with regard to the Salt, Verde and Gila rivers to implement the program suggested by Mr. Maughan including service.

The Buckeye Irrigation Company's Motion to Intervene and to File a Petition for Adjudication of Additional Rights in WC-1, the Gila River case, is heard at this time. John Schaper, Ralph Hunsaker and Stephen Carroll set forth their positions on this matter.

IT IS ORDERED granting the Motion and for Mr. Schaper to prepare and submit an order for the Court's signature.

Appendix B

FURTHER ORDERED that the Court Reporter, Robert Ferrara, shall prepare and submit a transcript of this morning's proceedings. The cost of this will be borne by the Department of Water Resources.

9:45 a.m. Court stands at recess.

APPENDIX C — ORDER OF THE SUPERIOR COURT OF MARICOPA COUNTY, STATE OF ARIZONA DATED MARCH 24, 1982

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

Div.: 20

Date: 3/24/82

Judge or Commissioner: HON. STANLEY Z. GOODFARB

Clerk: WILSON D. PALMER

Deputy: S. Sanders

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Ralph E. Hunsaker

Russell A. Kolsrud — A.G.

M. Byron Lewis/John B. Weldon

Joe P. Sparks

Z. Simpson Cox

Alvin H. Shrago

John S. Schaper

Appendix C

Tom Galbraith/Henry Ladendorff

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IT IS ORDERED approving and settling formal written Order, signed by the Court this date.

Appendix C

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

W-1 Salt, W-2 Verde,
W-3 Upper Gila and
W-4 San Pedro

IN RE THE GENERAL ADJUDICATION OF ALL RIGHT TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

ORDER

The motions to dismiss filed by the United States and the San Carlos and Tonto Apache Tribes having been set for March 1, 1982, and having come on for hearing at that date, and it appearing to the Court that the United States Circuit Court of Appeals for the Ninth Circuit ruled on February 22, 1982, in the following cases, *San Carlos Apache Tribe of Arizona v. State of Arizona*, 80-5137, 80-5138, 80-5189, 80-5219; *Northern Cheyenne Tribe v. Adsit*, 79-3887; and *Navajo Nation v. State of Arizona*, 80-5471, 80-5837, that the Arizona Enabling Act and Constitution prevented the State of Arizona from exercising jurisdiction over Indian tribes, and the Court having been further informed that relief from these rulings will be sought before the United States Supreme Court,

Appendix C

IT IS HEREBY ORDERED:

1. The motions of the United States and the San Carlos and Tonto Apache Tribes to dismiss are held in abeyance pending a final determination by the United States Supreme Court of the *San Carlos Apache Tribe of Arizona v. State of Arizona*, 80-5137, 80-5138, 80-5189, 80-5219 and *Navajo Nation v. State of Arizona*, 80-5471, 80-5837.

2. Until such time as whatever action the United States Supreme Court takes is final, the United States and the San Carlos and Tonto Apache Tribes and any other party to these consolidated matters shall not be required to file any statement of claimants or other pleadings with this Court. This order is not intended nor does it allow the filing of statement of claimants by any other persons who have not filed statements of claimants in these proceedings by the dates previously set in any of the above-consolidated matters for the filing of statement of claimants. No date having previously expired for the filing of statement of claimants is reopened or extended by this order.

3. If final action by the United States Supreme Court determines that the State of Arizona may exercise jurisdiction in these consolidated matters the motions to dismiss by the United States, the San Carlos and Tonto Apache Tribes will be set for hearing at a time convenient on this Court's calendar approximately 30 days after the final decision by the United States Supreme Court.

Appendix C

4. This order is not intended nor does it determine or affect the rights of any parties in the above-consolidated cases. During the time that the motions of the United States and the San Carlos and Tonto Apache Tribes are held in abeyance all proceedings in these consolidated matters which have occurred prior to this order will be preserved, and the Department of Water Resources may continue to investigate, gather, prepare and process information but may not do so respecting any claim or potential claim of the United States on behalf of any Indian tribe until resolution of the cases cited above in this matter.

DONE IN OPEN COURT 24th day of March, 1982.

_____

JUDGE OF THE SUPERIOR COURT

APPENDIX D — ORDER OF THE SUPERIOR COURT OF MARICOPA COUNTY, STATE OF ARIZONA DATED MARCH 1, 1982

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

Div.: 20

Date: 3/1/82

Judge or Commissioner: HON. STANLEY Z. GOODFARB

Clerk: WILSON D. PALMER

Deputy: S. Sanders

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Ralph E. Hunsaker

Russell A. Kolsrud — A.G.

M. Byron Lewis/
John B. Weldon

Joe P. Sparks

Z. Simpson Cox

Alvin H. Shrago

Appendix D

John S. Schaper

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Andrew R. Alex

10:10 a.m. This is the time set for the hearings on the Motions to Dismiss of the United States and the San Carlos and Tonto Apache Tribes. The following counsel appear: Ralph Hunsaker, Joseph Sparks, Steven Carroll, Z. Simpson Cox, Chester Peterson, M. Byron Lewis, Alvin Shrago, Andrew Alex, John Schaper, Bill Stephens and William Swan from the Dept. of Interior.

Appendix D

Teresa Louis, Court Reporter, is present.

The Court announces that just prior to these hearings, the 9th Circuit on 2/22/82, ruled in a group of cases — the northern Cheyenne, San Carlos Apache and Navajo nation cases — which dramatically change the posture of the motions that were to be heard today. Under these circumstances, this Court wishes to hold this matter in abeyance until it can determine the finality of these recently decided cases. During the period of abeyance no further notice to anyone or other activity will be carried out on any of the cases, with the Court trying to preserve what has been done and the cost that has been expended until it is determined if these 9th circuit decisions will stand or perhaps on appeal will be superceded by a contrary 10th circuit decision.

Discussion is held by Court and counsel with counsel for San Carlos and Tonto Apache Tribe opposing the same. The attorney for the United States also opposes, but does not indicate his client would be prejudiced by any delay.

Mr. Sparks, Mr. Carroll, (Mr. Hunsaker, Mr. Lewis, Mr. Cox and Mr. Swan all set forth their positions on the record.

For all of the reasons set forth in the discussion between Court and counsel, the Court decides to hold hearings to Dismiss in abeyance until there has been a determination of the finality of three cases recently decided by the 9th Circuit which are as follows: *San Carlos Apache Tribe of Arizona v. State of Arizona*, 80-5137, 80-5138, 80-5189, 80-5219;

Appendix D

Northern Cheyenne Tribe v. Adsit, 79-3887; *Navajo Nation v. State of Arizona* , 80-5471, 80-5837 with Judges Chow and Ferguson in the majority and Judge Merrill dissenting.

The Court will hear the Motions to Dismiss 30 days after finality has been determined on the three cases. This can be either by a determination on the motion for rehearing which determines finality of determination by the United States Supreme Court, either denying a position of certiorari or some other manner, then the Court will deem that it is without jurisdiction and will then dismiss as to the federal parties and the indian tribes appearing herein.

The Court reiterates than the Court's determination to hold this matter in abeyance until that determination, shall not adversely affect the rights of any of the moving parties.

This order will suspend all previous orders setting filing dates for the filing of statements of claim as far as the parties moving herein. The order does not, however, allow in the interim additional parties to file statements of claim since those dates have already run. The Court is not, by holding this matter in abeyance, opening up filings to other parties in this matter. The Court also advises that it will not deem it advisable for the Department of Water Resources to proceed with notification, publication, service of summons on any of the other matters that they were presently contemplating serving on and going forward with which are W-2 and W-3.

Counsel, Hunsaker, shall prepare and submit an appropriate order, for the Court's approval, settlement and signature.

APPENDIX E — ORDER OF THE SUPERIOR COURT OF MARICOPA COUNTY, STATE OF ARIZONA DATED MARCH 1, 1982

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

Div.: 19

Date: 9/16/83

Judge or Commissioner: HON. STANLEY Z. GOODFARB

Clerk: VIVIAN KRINGLE

Deputy: S. Sanders

IN RE THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE

Philip J. Shea

John B. Weldon, Jr.

Chester J. Peterson

Michael J. Brophy/
Richard N. Morrison

Jim Johnson

Andrew Alex/
Howard Twitty

Appendix E

John Molloy

Barbara Crawford
Clerk's Office

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Susan M. Segal – A.A.G.

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Appendix E

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This is the time set for the hearing on a Motion to Vacate the Stay to set hearing dates on all pending motions and set a deadline for statements of claimants.

The following attorneys appear: Byron Lewis, Steven Carroll, Joe Sparks, Kevin Tehan, Bill Swan, John Weldon, John Schaper, Steven Christiansen, Andrew Alex, Mark Sifferman, Kathy Ferris, David Pennartz, Bill Stephens, Russell Kolsrud & James Johnson.

Teresa Louis, Court Reporter, is present.

Counsel Lewis, Carroll and Sparks set forth their positions on the record.

ORDERED taking the matters under advisement.

Upon consideration of the motion, responses and oral argument and for the reasons discussed in open court,

IT TS ORDERED vacating the stay imposed on 3/24/82 in the above-entitled actions and ordering the same to proceed with reasonable and deliberate process.

Appendix E

FURTHER ORDERED that a hearing on the previously filed motions to dismiss and any new motions to be dismissed to be filed be held on 12/16/83 at 1:30 p.m. in courtroom 402 on the fourth floor of the central court building of this court.

The parties may file supplementary memoranda to their previously filed motions or new motions by 5:00 p.m. on 12/21/83. All responses thereto shall be filed by 5:00 p.m. on 11/18/83 and any replies to the responses shall be filed by 5:00 p.m., 12/2/83.

The Court at this time believes that a setting of a deadline for the filing of Statements for the federal or tribal claimants would be premature and should only be done if necessary after the hearing on the motions.

FILED
DEC 19 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-173

IN THE

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

CONSOLIDATED REPLY BRIEF OF PETITIONER TO PHELPS DODGE INCORPORATED, ET AL. BRIEFS IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES ii

PETITIONER'S CONSOLIDATED REPLY BRIEF .. 1

A. The Decision below Constitutes a "Final Judgment" under 28 U.S.C. § 1257(a) 1

B. *Arizona v. San Carlos* Required the Federal Reserved, Aboriginal, and Other Water Rights Claims for the Apache Reservation to be Adjudicated in Arizona's Stream Adjudication 2

C. *Nevada* and *Arizona v. California* Have Not Rejected the Defense of Inadequate Representation 7

CONCLUSION 10

APPENDIX — MOTION TO INTERVENE AS PLAINTIFF OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED MAY 25, 1990 ..... 1a

TABLE OF CITED AUTHORITIES

Page

Cases

Arizona v. California, 460 U.S. 605 (1983) ("*Arizona II*") 7, 9, 10

Arizona v. California, 530 U.S. 392 (2000) 5

Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983) 3, 6

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 2

Heckman v. United States, 224 U.S. 413 (1912) ... 7

Nevada v. United States, 463 U.S. 110 (1983) ..7, 8, 9, 10

United States v. Mitchell, 463 U.S. 206 (1983) 4

U. S. v. Truckee-Carson Irrigation District, 649 F.2d 1286 (9th Cir. 1981), *modified at* 666 F.2d 351 (9th Cir. 1982) 8

United States v. Winans, 198 U.S. 371 (1904) 4

Winters v. United States, 207 U.S. 564 (1908) 4

Statutes

McCarran Amendment, 43 U.S.C. § 666 7

28 U.S.C. § 1257(a) 1, 2

PETITIONER'S CONSOLIDATED REPLY BRIEF

Petitioner, the San Carlos Apache Tribe ("Apache Tribe" or "Tribe") submits this Consolidated Reply to the Responses in Opposition to the Tribe's Petition filed by Phelps Dodge Corporation ("Phelps Dodge"), the City of Safford ("Safford"), and the Gila Valley Irrigation District and Franklin Irrigation District ("GVID") (collectively "respondents").[1]

A. The Decision below Constitutes a "Final Judgment" under 28 U.S.C. § 1257(a)

The United States agrees with Petitioner that the decision below constitutes a "final judgment" for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a).[2] Only Safford argues that because the Tribe's claims to the "tributary waters" of the Gila River remain to be adjudicated in Arizona's stream adjudication, the decision of the Arizona Supreme Court regarding the Tribe's claims to the **mainstream** of the Gila River is not "final" for purposes of this Court's review.[3] Safford is wrong.

The decision below is final and plainly severable from the Tribe's remaining water rights claims to the tributaries of the Gila River. In the decision below, the Arizona Supreme Court expressly precluded the Apache Tribe and the United States as its trustee from ever **asserting or proving** any federal reserved, aboriginal, or other water rights claims to the mainstream of the Gila River. As far as the State stream adjudication is concerned, these claims have been effectively and finally "adjudicated." Additional water from the mainstream is now unavailable to meet the needs of the Apache Reservation as a "permanent Tribal homeland."

The Gila River mainstream runs through the very heart of the Reservation. It is the single most valuable source of water

1. The Apache Tribe has filed separate replies to the Response in Opposition filed by the United States and the Response in Opposition filed by ASARCO, LLC.

2. United States Response in Opposition ("U.S. Resp.") at 9.

3. Brief in Opposition for Respondent City of Safford ("Safford Resp.") at 9-10.

in the region, and unlike the tributaries, it is located near all of the Apache Tribe's population centers, major highways, electrical lines, farmlands and infrastructure, and has the longest growing season on the Reservation. However, as a result of the ruling below, the Tribe is foreclosed **today** from diverting any of the waters of the mainstream, except for the annual irrigation of 1,000 acres of land under the *Globe Equity Decree*.[4] This ruling is final and has no chance of being reversed or otherwise corrected by any decision on the Tribe's claims to the tributaries. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). This Court has jurisdiction under 28 U.S.C. § 1257(a).

B. *Arizona v. San Carlos* Required the Federal Reserved, Aboriginal, and Other Water Rights Claims for the Apache Reservation to be Adjudicated in Arizona's Stream Adjudication

Fundamental protections of due process entitle the Tribe to defend against the respondents' use of *res judicata* as "sword" to eviscerate the Apache Tribe's right to adjudicate its water right claims to the Gila River mainstream. However, respondents deliberately mischaracterize the Apache Tribe's constitutionally protected due process rights to defend itself from the affirmative defense of *res judicata* as an "attack" on the *Globe Equity Decree* (or sometimes as a "claim" of inadequate representation). A similarly erroneous tact was employed by the Arizona Supreme Court in its decision below on "comity."[5]

4. *See* Apache Tribe Appendix to Petition for Certiorari, No. 06-173 ("App.") at 31a-47a. This is in contrast to the many thousands of non-Indian claimants whom have yet to have a single claim adjudicated in Arizona's stream adjudication.

5. The Arizona Supreme Court also characterized the Tribe's defense to *res judicata* as an "attack" on the *Decree*, and then speculated, without the aid of briefing or an evidentiary record adduced from a trial on the merits, that the Tribe made a "strategic decision" not to raise its unadjudicated claims to the Gila River mainstream when it intervened in *Globe Equity* in 1990. This conclusion was based on an unrelated ruling made by the *Globe Equity* court in 1983 involving the Gila River Indian Community ("GRIC"). The inapplicability of GRIC's 1983 ruling (Cont'd)

Having mischaracterized the Apache Tribe's defense to *res judicata* as an "attack" or "claim", respondents then argue that the Tribe should have filed its "claim" for inadequate representation (or leveled its purported "attack" on the *Decree*) in the federal *Globe Equity Court* when, in 1990, it intervened to enforce the *Decree* against upstream pumping.[6] Finally, so the argument goes, because the Tribe **did not** present the *Globe Equity Court* with this opportunity when it intervened in 1990, the Tribe is **now** barred from defending against *res judicata* in Arizona's stream adjudication. This argument deliberately misunderstands the history of this case and the holding of this Court in *Arizona v. San Carlos*.

Over the vigorous objections of the Apache Tribe and others, this Court directed the United States in 1983 to file all of its water rights claims for Indian tribes in Arizona, including the Apache Reservation, in the State stream adjudication,[7] and required that **all questions** regarding the water rights claims for the Apache Reservation be litigated in a "comprehensive" McCarran Amendment proceeding. Both the United States and the Apache Tribe filed separate claims for federal reserved,

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(Cont'd)
in *Globe Equity* to the Apache Tribe is discussed in the Tribe's Reply to the Response in Opposition filed by ASARCO, L.L.C. The Tribe does not restate this argument here.

6. *See* Motion to Intervene, May 25, 1990, attached here as Appendix A.

7. Understanding that it was the State's strategy to capture jurisdiction over the water rights claims by and for the Apache Tribe for adjudication in the State's nascent stream adjudication, the Apache Tribe filed original actions in **federal court** in 1979 seeking to adjudicate the Tribe's federally protected water rights for its Reservation. On review by this Court, the Apache Tribe (along with several other Indian tribes) argued, *inter alia*, that an adjudication of their federally protected water rights could be completed more rapidly, fairly, and competently in federal court. The Apache Tribe and others also explained that federal courts were at least perceived to be less likely to engage in the discriminatory practices against Indians which have historically plagued Arizona's court system.

aboriginal and other water rights to, *inter alia*, the mainstream of the Gila River on November 1, 1985, pursuant to the final deadlines issued by the State adjudication court.

Significantly, when the Apache Tribe's claims were filed in 1985, the Tribe's opponents did not then allege that the *Globe Equity Decree* precluded the claims of the Tribe or the United States to the mainstream of the Gila River under principles of *res judicata*.[8] The Tribe and the United States simply had no reason in 1985 to doubt that they were entitled under all principles of law and equity and this Court's decisions in *United States v. Winans*, 198 U.S. 371 (1904) and *Winters v. United States*, 207 U.S. 564, 565 (1908), to file water rights claims to the Gila River mainstream, regardless of the very nominal right previously decreed to the United States in *Globe Equity*.[9] Indeed, the United States' Statement of Claim filed on the same day as the Apache Tribe, confirmed the Apache Tribe's view of these matters, since the United States also included a claim for substantial additional water rights to the Gila River mainstream for the Apache Reservation.[10]

By 1990, when the Tribe intervened in *Globe Equity* on its own behalf, the defense of *res judicata* **still** had not been raised by the Tribe's opponents,[11] and the Tribe was not aware of any

8. If the respondents intended to preclude the Tribe from claiming rights to the Gila River mainstream, they could have raised this argument when the Tribe filed its original actions for the adjudication of its water rights in federal court in 1979. They did not.

9. Indian tribes are entitled to rely upon the good faith of the United States, and to assume that in the exercise of its role as trustee, the government acted for the Tribe's benefit. *See United States v. Mitchell*, 463 U.S. 206, 225-26 (1983).

10. The United States' Statement of Claimant filed November 1, 1985, claimed more than 209,643 acre-feet of water per year from the Gila River mainstem. *See* Supplemental Appendix to Apache Tribe's Petition for Certiorari, No. 06-173 ("Supp. App.") at 68-102.

11. In fact, the Tribe's opponents delayed asserting the affirmative defense of *res judicata* for almost 16-years, and even then, only raised *res judicata* because the State adjudication court invited this approach (Cont'd)

purported basis or need for it to "attack" the *Decree*, even though very substantial water rights claims to the mainstream of the Gila River for the Tribe had been pending in the Arizona's stream adjudication for over five years.[12] The Tribe made this point expressly clear to the *Globe Equity Court* and these respondents in its Motion to Intervene, dated May 25, 1990, where it candidly stated:

> None of the above allegations seek to vacate the Decree, or re-litigate issues. The APACHE TRIBE does not

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(Cont'd)
in an Order entered on August 24, 1999 (App. 278a). In accordance with this invitation, respondents finally filed motions for summary judgment asserting, *inter alia*, the affirmative defense of *res judicata* on March 28, 2001. This Court has rejected untimely assertions of *res judicata* in the past, including in *Arizona v. California*, 530 U.S. 392, 393 (2000):

> The State parties could have raised the defense in 1979 in response to the United States' motion for a supplemental decree granting additional water rights for the Fort Yuma Reservation. The State parties did not so then, nor did they raise the objection in 1982 when *Arizona II* was briefed and argued. Unaccountably, they raised the preclusion argument for the first time in 1989, when they initiated the current round of proceedings. **The State parties had every opportunity, and every incentive, to press their current preclusion argument at earlier stages in the litigation, yet failed to do so * * * * We disapprove of the notion that a party may wake up because a "light finally dawned," years after the first opportunity to raise a defense, and effectively raise it** so long as the party was (through no fault of anyone else) in the dark until its late awakening. (Emphasis added) (Internal citations omitted).

12. The United States explained in its Response Brief:

> While petitioner was free to defend its *existing* rights under the Globe Equity Decree in the court that entered the Decree, this Court's *San Carlos* decision permitted petitioner to claim *additional* rights only in this state-court litigation. The Arizona Supreme Court therefore erred in holding that petitioner had voluntarily "declined to adjudicate its 'inadequate representation' claim" in the Globe Equity court. (Italics in original).

> seek to litigate rights to additional Gila River water in this matter, and no allegations have been made in the proposed Complaint in Intervention regarding *Winters* water rights. However, the APACHE TRIBE has been and will continue to litigate its claims to federally reserved *Winters* water rights in State Court in the State of Arizona "Gila River Adjudication" matter ... which is now pending in Maricopa County Superior Court before the Hon. Stanley Z. Goodfarb.

Even after the Tribe's opponents attacked the Tribe's claims to the Gila River mainstream using the "sword" of *res judicata*, the Tribe continued to make clear that it was **not** seeking to upset or invalidate the *Decree*. The Tribe simply argued that the United States, acting in "good faith", could not have intended to adjudicate the Apache Tribe's federally protected water rights to the mainstream of the Gila River in the *Decree*, or **alternatively**, that there was no "privity" between the United States and the Tribe in *Globe Equity*, as such term is defined as a necessary element of *res judicata*, because the United States failed to adequately represent the Tribe in *Globe Equity*.

In short, the Tribe's challenge to the adequacy of the United States' representation, raised as a shield **in defense** of a *res judicata* attack on its water rights claims, was in no way a "strategic choice" to levy an impermissible collateral attack on the *Globe Equity Decree* in the State adjudication, rather than in the federal *Globe Equity Court*.[13] This Court directed in *Arizona v. San Carlos* that all water rights claims for the Apache Reservation must be adjudicated in Arizona's stream adjudication. Having done as instructed, the Tribe was acutely aware that it could not then seek to adjudicate these very same claims (or any issue necessary for the adjudication of such

13. Ironically, had the Apache Tribe attempted to return to the *Globe Equity Court* to "attack" the *Decree* on inadequate representation grounds in 1990, there can be little doubt its opponents would have called such an "attack" premature, noting that both the Tribe and the United States still had claims for additional water rights to the mainstream of the Gila River pending in Arizona's stream adjudication.

claims) in the federal *Globe Equity Court*, as this would result in the "piecemeal" adjudication this Court had previously determined violated the McCarran Amendment.

C. *Nevada* and *Arizona v. California* Have Not Rejected the Defense of Inadequate Representation

Respondents do not cite to any case in which this Court has held that the defense of inadequate representation **cannot** be asserted by an Indian tribe confronted with the affirmative defense of *res judicata* in a water rights adjudication. Respondents' strained interpretation of this Court's decisions in *Nevada v. United States*, 463 U.S. 110 (1983) and *Arizona v. California*, 460 U.S. 605 (1983) ("*Arizona II*") do not change this fact.[14]

In *Nevada*, the Pyramid Lake Paiute Tribe ("Paiute Tribe") **did** assert the defense of inadequate representation in the trial court, and the trial court held a 43-day trial to examine the factual issues surrounding the United States' representation of the Paiute Tribe in the earlier proceeding, know as the "*Orr Ditch*" litigation.[15] On appeal, the Ninth Circuit ruled that the Paiute Tribe **was** entitled under constitutional protections of due process to **raise** the defense of inadequate representation as a matter of law against those who asserted the *Orr Ditch* decree as preclusive of the Paiute Tribe's additional claims for a Tribal fishery, though the Ninth Circuit went on to hold that the Paiute Tribe had failed to prove as a **factual** matter that the government

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14. Respondents make much of this Court's decision in *Heckman v. United States*, 224 U.S. 413 (1912). However, this case merely stands for the unremarkable proposition that where the United States is authorized to represent Indian allottees in litigation, even where the tribe or allottee is **not** joined by the United States as a necessary party in such litigation, the United States has the authority to bind the allottees to a judgment under principles of *res judicata*. *Heckman* does not mean, however, that the burden of proving the elements of *res judicata* have been abandoned when it comes to Indians, or that tribes have been stripped of their due process rights to defend against those who would assert that existence of "privity" between the United States and the Tribe in a prior action in which the Indian tribe was not a party.

15. The Apache Tribe was denied any opportunity to prove its defenses to *res judicata* in a trial on the merits.

had inadequately represented the Tribe in *Orr Ditch*. *See U. S. v. Truckee-Carson Irrigation District*, 649 F.2d 1286, 1306-1307 (9th Cir. 1981), *modified at* 666 F.2d 351 (9th Cir. 1982). Contrary to the assertions of respondents, however, the Ninth Circuit's ruling as to inadequate representation was never appealed to this Court in *Nevada*.

What was appealed and ultimately rejected by this Court in *Nevada* was the Paiute Tribe's claim that the United States had a *per se* "impermissible conflict of interest" in representing both the Tribe and non-Indian irrigation district throughout the *Orr Ditch* litigation. This Court reasoned that since the United States is typically required to represent varied interests in comprehensive water rights adjudications, it would be unreasonable to hold the United States to a **strict** standard of a fiduciary in all instances, and thus, there could be no *per se* impermissible conflict of interest arising out of the United States' mere representation of varied interests in *Orr Ditch*.[16]

In contrast to the United States' conduct in *Orr Ditch*, the United States negotiated the *Globe Equity Decree* in the face of an **actual** conflict of interest wherein the Secretary of Interior disregarded any fiduciary obligation to the Tribe in favor of a clear pattern of self-dealing designed (successfully) to further the interests of the Secretary's own project, the San Carlos Irrigation Project ("SCIP"), all to the profound and very real detriment of the Tribe.[17] Thus, this is not a case in which the Apache Tribe asserts the existence of *per se* "conflict of interest" based merely on the fact that the United States in *Globe Equity* "carried water on at least two shoulders." *Nevada*, 463 U.S. at 128, 141. Here, the conflict was real and pervasive, and resulted in an almost complete abandonment of the Apache Tribe's federally protected water rights claims to the mainstream of the

16. *Nevada*, 463 U.S. at 128, 135.

17. Although the construction of SCIP on the Apache Reservation destroyed many of the Tribe's homes, graves, farms, and gardens, the Tribe was not included in the SCIP, and it received no benefits from the SCIP.

Gila River in the *Decree*.[18] The *Decree* simply cannot, consistent with due process, be asserted as preclusive of the Tribe's claims in this instance, as such conduct destroys the element of privity between the United States and the Tribe necessary for *res judicata* to be applied

Finally, respondents are also wrong to argue that this Court's decision in *Arizona II*, bars the Tribe's inadequate representation defense. In fact, in *Arizona II*, this Court tacitly **acknowledged** the viability of the inadequate representation defense, when it examined each of the legal elements of this defense, but nevertheless determined as a **factual matter** that the Colorado River tribes, having been decreed hundreds of thousands of acre feet of water, had been more than adequately represented in the prior proceeding:

> [W]e have no indication that the Government's representation of the Tribe's interests with respect to the amount of practicably irrigable acreage was **legally inadequate**. Indeed, the substantial water allocation awarded the Tribes reflect the competency of the United States' representation. We believe that the issue of

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18. In rejecting a *per se* rule based upon an apparent conflict of interest arising out of the United States' dual representation in *Nevada*, this Court also found important the fact that during the *Orr Ditch* litigation, the Bureau of Indian Affairs ("BIA") and its attorneys represented the Paiute Tribe, while the Bureau of Reclamation and its attorneys separately represented the non-Indian irrigation district. Therefore, even though the claims for the Paiute Tribe and the irrigation district competed with each other, in theory, they receive adequate representation through each of these different sets of government attorneys and representatives. *Id.* at 135-137. In contrast, in *Globe Equity*, the same government attorneys not only represented the varied federal interests of the United States and its Project, the SCIP, as well as GRIC and the San Carlos Irrigation and Drainage District, but also purported to represent the Apache Tribe, whose federally protected water rights seriously conflicted with the water rights for SCIP and the other beneficiaries of the Project.

practicably irrigable acreage was fully and fairly litigated in 1963.[19]

The respondents, here, cannot point to any "substantial water allocation" awarded to the Apache Tribe in the *Globe Equity Decree*.[20] Regardless of how respondents characterize this Court's holdings in *Nevada* and *Arizona II*, neither case ruled that the United States is free to act under an actual conflict of interest and simply serve itself to the water which it should have protected for its beneficiary, the Apache Tribe. In such circumstances, the defense of inadequate representation must remain under fundamental principles of due process.

CONCLUSION

The Apache Tribe respectfully requests that the Court issue a writ of certiorari to the Arizona Supreme Court on the two Issues presented in the Tribe's Petition.

Respectfully submitted,

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19. *Arizona II*, 460 U.S. at 628 & n.21 (emphasis added).

20. This Court in *Arizona II* also acknowledged that an **actual** conflict of interest might preclude the application of *res judicata*, where it observed:

> **In this case, there is no demonstration that the United States, as a fiduciary, was involved in an actual conflict of interest**. From the initiation of this case, the Government has taken seriously its responsibility to represent the Tribes' interests . . . . *Arizona II*, 460 U.S. at 627 (emphasis added).

APPENDIX

APPENDIX — MOTION TO INTERVENE AS PLAINTIFF OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DATED MAY 25, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GLOBE EQUITY NO. 59 (JCC)

(Oral Argument Requested)

UNITED STATES OF AMERICA,

Plaintiff,

and

GILA RIVER INDIAN COMMUNITY,

Plaintiff in
Intervention,

vs.

GILA VALLEY IRRIGATION DISTRICT, et. al.,

Defendants.

MOTION TO INTERVENE AS PLAINTIFF

The San Carlos Apache Tribe, (herein "the APACHE TRIBE"), by and through counsel undersigned, hereby moves this Court for leave to intervene in the above captioned matter pursuant to Rule 24(a)(2), Rules of Civil Procedure, as a Plaintiff in the above-captioned matter to assert the claims set forth in

the proposed Complaint in Intervention attached hereto as Exhibit 1, on the grounds that the APACHE TRIBE has the right to intervene. Alternatively, the APACHE TRIBE submits that the Court has the discretion to allow the APACHE TRIBE to intervene pursuant to Rule 24(b), Rules of Civil Procedure.

This Motion is based upon the following Memorandum of Points and Authorities, and all pleadings, motions and other documents of record in this action. The original Complaint in Intervention is tendered to the Clerk of the Court for filing if ordered by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 24(a)(2), Rules of Civil Procedure, provides as follows:

> Upon timely application anyone shall be permitted to intervene in an action ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The APACHE TRIBE respectfully submits that it has the right to intervene to assert the claims set forth in the proposed Complaint in Intervention under Rule 24(a)(2). The right to intervene is mandatory if the two conditions of Rule 24(a) (2) are satisfied; otherwise it is discretionary under Rule 24(b). The two relevant grounds for intervention under Rule 24(a) (2) are: (1) that the applicant claims an interest relating to the property which is the subject of the action; and (2) that the applicant's

interest may as a practical matter be impaired unless the applicant is adequately represented by existing parties.

The APACHE TRIBE's grounds for intervention under Rule 24(a)(2) are therefore two-fold. First, the APACHE TRIBE alleges that its water rights granted to it under the Decree have been violated and are not being enforced, and that these allegations are the subject of the Court's continuing jurisdiction to enforce the Decree in this matter. Second, the APACHE TRIBE alleges that unless it is allowed to represent itself, its interests may as a practical matter be impaired.

A. The APACHE TRIBE Claims An Interest In The Waters Of The Gila River Which Is The Subject Matter Of This Litigation.

The APACHE TRIBE's rights under the Decree to divert Gila River water for irrigation purposes and to otherwise use and enjoy the "natural flow" of the Gila River through the Reservation have not been properly enforced by the Water Commissioner, and such rights have been violated by the Defendants who unlawfully divert, use, and pump Gila River water upstream from the San Carlos Apache Reservation (herein, "the Upper Valley Defendants"). Such water rights of the APACHE TRIBE are protected by the Decree, and are subject to enforcement by the Court through the exercise of its continuing jurisdiction in the above-captioned matter.

Under paragraph XII of the Decree filed in this matter on June 29, 1935 (herein "the Decree"), the Court may review the actions or orders of the Water Commissioner, and may make such orders as are proper in the premises. Under paragraph XIII of the Decree, the parties have been enjoined from violating any terms of the Decree, and the Court may enforce the rights of the parties under the terms of the Decree through the exercise of its continuing jurisdiction in this matter.

Appendix

The Court in Globe Equity No. 59 has traditionally exercised continuing jurisdiction throughout the years to resolve matters affecting the enforcement of the water rights granted to the parties under the terms of the Decree, and to interpret such rights under the Decree. For example, see *Gila Valley Irr. Dist v. U.S.*, 118 F.2d 507 (9th Cir., 1941) ("stored" water does not include all water flowing into the San Carlos Reservoir); *Brooks v. U.S.*, 119 F.2d 636 (9th Cir., 1941) (U.S. District Court in Arizona had jurisdiction to decide relative rights of New Mexico water users to the Gila River); and *United States v. Gila Valley Irrigation District*, 454 F.2d 219 (9th Cir., 1972) (Lower Valley Users as a compromise waived certain water priorities to Upper Valley Users in favor of limited use by Upper Valley Users). In 1983, this Court allowed the Gila River Indian Community to intervene and file a Complaint alleging violations of the Decree by the parties.

The proposed Complaint in Intervention alleges claims which are similar in nature to those types of claims that the Court has determined in the past, or which are presently pending before the Court. Thus, the proposed Complaint in Intervention in general alleges that the APACHE TRIBE has certain water rights granted to it under the terms of the Decree, and that the Water Commissioner has failed to enforce and protect its rights, and that the Upper Valley Defendants have violated its water rights under the Decree. The APACHE TRIBE alleges that it therefore has been unable to divert water for irrigation purposes, or to otherwise use and enjoy the natural flow of the Gila River water through the San Carlos Apache Reservation (herein, "the Reservation").

Summarizing the allegations, the APACHE TRIBE alleges in Count One of the proposed Complaint in Intervention, that the Upper Valley Defendants divert Gila River water in violation of the APACHE TRIBE's superior rights as set forth in the

Decree, because paragraph VIII of the Decree does not apply to the APACHE TRIBE, but only applies to parties who are allowed by the Decree to divert Gila River water downstream from the Reservation (herein, "the Lower Valley Users").

Count Two alleges that that the Upper Valley Defendants unlawfully divert Gila River water because their diversions exceed the amount of water apportioned to them by the Water Commissioner under the terms of paragraph VIII of the Decree.

Count Three alleges that the Water Commissioner's method of apportioning Gila River water on the first of each year is improper because apportionments based on stored water available for release may be carried over from year to year.

Count Four alleges that there is now "a lack of available stored water" in the Reservoir within the meaning of the terms of the Decree for any new apportionments to be made by the Water Commissioner for the Upper Valley Defendants.

Count Five alleges unlawful diversions and use of the Gila River by the Upper Valley Defendants including their practice of diverting Gila River water to recharge their aquifers and wells, and then pumping the water for irrigation purposes when needed at a later time.

Count Six alleges that the Upper Valley Defendants pump Gila River water from wells in which the water is hydrologically connected to the natural flow of the Gila River and which reduces or interrupts such flow. Count Six contains allegations which are similar to Count Eight of the Gila River Indian Community's Amended Complaint in Intervention, and Count Eight is now pending before the Court for Pretrial Orders.

Finally, Count Seven alleges that the Upper Valley Defendants have interfered with the use and enjoyment of the Gila River by degrading the quality of the Gila River.

All of the above allegations are within the continuing jurisdiction of this Court in this matter to review, and to make orders for the enforcement of the terms of the Decree as the Court deems proper.

None of the above allegations seek to vacate the Decree, or re-litigate issues. The APACHE TRIBE does not seek to litigate rights to additional Gila River water in this matter, and no allegations have been made in the proposed Complaint in Intervention regarding *Winters* water rights. However, the APACHE TRIBE has been and will continue to litigate its claims to federally reserved *Winters* water rights in State Court in the State of Arizona "Gila River Adjudication" matter captioned *In The General Adjudication of All Rights to Use Water in the Gila River System and Source,* W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro), which is now pending in the Maricopa County Superior Court before the Hon. Stanley Z. Goodfarb.

Thus, the APACHE TRIBE in the proposed Complaint in Intervention, seeks only the enforcement of its water rights granted under the terms of the Decree which is the subject matter of the Court's continuing jurisdiction in this matter.

The APACHE TRIBE urges the Court to grant its Motion to Intervene and to exercise its continuing jurisdiction to decide the matters alleged in the APACHE TRIBE's proposed Complaint in Intervention. The Court has subject matter jurisdiction over all the lands and interests in lands and other property rights and personal jurisdiction over all of the necessary parties to adjudicate the claims asserted in the proposed Complaint in Intervention.

The Court should therefore allow intervention if it believes that the APACHE TRIBE's interests are not adequately represented by the United States in this matter at least for purposes of Rule 24(a)(2).

B. The APACHE TRIBE's Interests Are Not Adequately Represented By The United States In Globe Equity No. 59 for Purposes of Rule 24(a)(2).

The APACHE TRIBE's interests in the waters of the Gila River will continue to be impaired unless the APACHE TRIBE is allowed. to intervene and represent itself. While the United States purports to represent the APACHE TRIBE's interests in this matter as trustee for the APACHE TRIBE, such representation in the past has proven to be inadequate. For example, the United States agreed in the Decree as trustee for the APACHE TRIBE, but without its consent, that the APACHE TRIBE would only be entitled to divert 6,000 acre feet of water for irrigation purposes, rather than the 18,000 acre feet of water that the United States had alleged the APACHE TRIBE was entitled to receive based upon historical use.

Furthermore, while the United States reserved storage space for water behind Coolidge Dam for the lands of the San Carlos Irrigation Project downstream from the Reservation, the United States, although it had the power to do so, never reserved any storage space for water behind Coolidge Dam for the APACHE TRIBE. The United States has never adequately represented the APACHE TRIBE with respect to the APACHE TRIBE's unique interests in this matter since 1935.

The APACHE TRIBE does assert claims unique to its interests in the proposed Complaint in Intervention because (1) the APACHE TRIBE is neither an "Upper Valley User", nor a "Lower Valley User", unlike every other party in this matter; and

(2) the APACHE TRIBE's rights to use the Gila River for irrigation purposes, and to use and enjoy the natural flow of Gila River through the Reservation, are not subject to any diversion rights of the Upper Valley Defendants under paragraph VIII of the Decree, as alleged in Count One of the proposed Complaint in Intervention.

Courts have uniformly allowed an Indian Tribe to intervene to represent itself where the Indian Tribe has alleged inadequate representation by the United States, especially where there is the potential for a conflict of interest in such multiple client representation. The United States has already conceded that such a conflict may exist in this matter when it responded to the Motion of the Gila River Indian Community to intervene in this matter. In *Arizona v. California,* 460 U.S. 605, 613-615, 103 S.Ct. 1382 (1983), the U.S. Supreme Court held that the Indian Tribes affected by the adjudication were entitled to intervene and represent themselves regarding the allocation of rights to the waters of the Colorado River.

The Order of the Court in this matter dated May 2, 1983, allowed the Gila River Indian Community to intervene and expressly recognized the right that an Indian Tribe has to represent itself:

> Upon reviewing the parties' contentions in light of the relevant case law, I conclude that for the purposes of Fed. R. Civ. P. 24(a)(2), GRIC [Gila River Indian Community] has made a sufficient showing of inadequate representation. As the court recently stated in *Arizona v. California,* 51 U.S.L.W. at 4328 [460 U.S. 605, 103 S.Ct. 1382], in reviewing certain exceptions taken to the Special Master's Report, it was proper to permit intervention in this kind of case because the Indians ought to be allowed "to take

> their place as independent qualified members of the modern body politic" and their "participation in litigation critical to their welfare should not be discouraged" (citations omitted). The court, therefore, agreed with the Special Master that the motions to intervene ought to be granted. [at p. 9].

A conflict in interest invariably arises in "stream adjudication" cases when the United States attempts to represent different parties like the Secretary of Interior (Bureau of Reclamation or Bureau of Indian Affairs), and an Indian Tribe, where each of the parties have conflicting interests and claims to the same water. *Pyramid Lake Paiute Tribe of Indians v. Morton,* 354 F. Supp. 252 (D.C. Dist. 1972).

In this matter, there exists the potential for a conflict of interest between the United States' interests and that of the APACHE TRIBE to the waters of the Gila River, and the parties should therefore have the right to have their own legal counsel represent them.

For all of the above reasons, the APACHE TRIBE therefore respectfully submits that the Court find that the APACHE TRIBE's interests are not adequately represented by the United States for purposes of allowingintervention under Rule 24(a)(2).

C. The APACHE TRIBE Has The Right To Intervene In Globe Equity No. 59.

The APACHE TRIBE submits that it satisfies both conditions of Rule 24(a)(2), and that the Court should therefore grant the APACHE TRIBE leave to intervene in this matter, and file the proposed Complaint in Intervention. Alternatively, the APACHE TRIBE submits that it has satisfied the standards for permissive intervention at a minimum under Rule 24(b), Rules of Civil Procedure.

Appendix

In conclusion, the Court exercises continuing jurisdiction in this matter to enforce violations of the Decree by the parties to the Decree. The APACHE TRIBE has alleged meritorious claims against the Water Commissioner and the Upper Valley Defendants. Each year there is less water flowing in the Gila River and the quality of such water is degraded and polluted due to illegal diversions, use, pumping and other unlawful conduct by the Upper Valley Defendants. The filing of the proposed Complaint in Intervention is timely because the remedies sought include the restoration of a natural and adequate flow of the Gila River through the Reservation as provided for in the Decree. The APACHE TRIBE seeks only the proper enforcement of the Decree, and the parties are therefore precluded from complaining of any untimeliness or prejudice to them. *See* Order of this Court dated May 2, 1983 in which the Court held:

> To the extent that GRIC [Gila River Indian Community] seeks to enforce the Decree, however, Globe Equity No. 59 is still very much alive. The court retained jurisdiction to enforce the Decree. The continued viability of this aspect of the case is demonstrated by the currently pending action of the United States to enforce the Decree. The ongoing enforcement of the Decree naturally has an impact on GRIC's rights under the Decree. Undoubtedly, therefore, GRIC has rights to the water that is the subject of Globe Equity No. 59 that may be impaired or impeded if the Decree is improperly administered. [at p. 7].

Finally, the Court should grant leave to the APACHE TRIBE to intervene in this matter for the same reasons that the Court allowed the Gila River Indian Community to intervene in this matter in 1983.

WHEREFORE, the APACHE TRIBE requests that the Court allow it to intervene as a matter of right in this matter, or alternatively, as a matter of permission, and to file the Complaint in Intervention attached hereto as Exhibit 1.

Respectfully submitted this 25th day of May, 1990.

SPARKS & SILER, P. C.

s/ Joe P. Sparks

By s/ John H. Ryley
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Apache Tribe of Arizona

(10)

No. 06-173

IN THE

Supreme Court of the United States

SAN CARLOS APACHE TRIBE,

Petitioner,

v.

STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; PHELPS DODGE INCORPORATED; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

REPLY BRIEF OF PETITIONER TO THE UNITED STATES

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TABLE OF CONTENTS

	Page
TABLE OF CITED AUTHORITIES	ii
PETITIONER'S REPLY BRIEF TO THE UNITED STATES	1
A. The United States Agrees with Petitioner that this Court has Jurisdiction under 28 U.S.C. § 1257(a)	1
B. The Petition Raises Issues Of Broad Legal Significance for Indian Tribes and for the United States In its Role as Trustee for the Tribes	2
1. Constitutional Protections of Due Process Mandate that Indian Tribes Be Permitted to Defend Themselves Where the Affirmative Defense of *Res Judicata* is Converted Into a "Sword" To Attack Indian Tribes' Water Rights	2
2. The Arizona Supreme Court's Application of Comity Directly Conflicts With This Court's Decisions in *Arizona v. San Carlos* and *Colorado River Water Conservation Dist. v. United States* ...	6
C. Whether the Apache Tribe Would Prevail as a Factual Matter In its Challenge to the Adequacy of the United States' Representation of the Tribe in *Globe Equity* Has Never Been Considered By Any Court In a Trial On the Merits	9
CONCLUSION	10

TABLE OF CITED AUTHORITIES

Cases	Page
Arizona v. California, 460 U.S. 626 (1983)	10
Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983)	6, 7, 8, 9, 10
Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971)	5
Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)	6
Cox Broadcasting Corp. v. Cohen, 420 U.S. 469 (1975)	1
Hansberry v. Lee, 311 U.S. 32 (1940)	5
Heckman v. United States, 224 U.S. 413 (1912)	4
Nevada v. United States, 463 U.S. 110 (1983)	10
Postal Telegraph Cable Co. v. City of Newport, 247 U.S. 464 (1918)	5
United States v. Dion, 476 U.S. 734 (1986)	4
United States v. District Court for Eagle County, 401 U.S. 520 (1971)	6
Winters v. United States, 207 U.S. 564 (1908)	10

Cited Authorities

Page

Statutes

McCarran Amendment, 43 U.S.C. § 666 7

Restatement (Second) Judgments, § 42(1)(e) 4

28 U.S.C. § 1257(a) 1

Other Authorities

Rule 60(b), Federal Rules of Civil Procedure 8

PETITIONER'S REPLY BRIEF TO THE UNITED STATES

Pursuant to Rule 16.6 of the Rules of the Supreme Court of the United States, Petitioner, San Carlos Apache Tribe ("Apache Tribe" or "Tribe"), submits this Reply to the United States' Brief in Opposition to the Tribe's Petition for Writ of Certiorari to the Arizona Supreme Court.[1]

A. The United States Agrees with Petitioner that this Court has Jurisdiction under 28 U.S.C. § 1257(a)

Citing *Cox Broadcasting Corp. v. Cohen*, 420 U.S. 469, 480 (1975), the United States agrees with the Petitioner that the decision below constitutes a "final judgment" for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a):

> [T]his Court has jurisdiction to consider the petition under 28 U.S.C. § 1257(a) .... Moreover, a general stream adjudication is a paradigmatic case for application of the *Cox Broadcasting* rule quoted above ... This case has been pending for over two decades. It would make little sense for this Court to defer review of one claim or issue until all others are resolved, potentially several decades later. That course could prejudice *all* parties to the adjudication if this Court ultimately upset decades of litigation by overturning an initial determination.[2]

The most tragic of consequences is the continued deprivation of the waters of the Gila River mainstream for use by the Apache Tribe. Water and prosperity are inseparable in Arizona. To overcome the unequaled poverty on the San Carlos Apache Reservation ("Reservation"), the Apache Tribe must have sufficient water to fulfill the purposes of the Reservation as a permanent Tribal homeland. As the United States correctly

1. Simultaneous with this Reply, the Apache Tribe is filing (1) a Reply to the Response in Opposition filed by ASARCO, LLC; and (2) a Consolidated Reply to the Responses in Opposition filed by Phelps Dodge Corporation, the City of Safford, and the Gila Valley Irrigation District.

2. Brief of the United States in Opposition ("U.S. Resp.") at 9-10 (internal citations omitted) (italics in original).

observed, Arizona's stream adjudication has already been pending for over two decades. This delay violates, *inter alia*, the fundamental due process rights of the Tribe, because it leaves the Tribe unable to protect and use its prior perfected federally reserved, aboriginal and other water rights to the mainstream of the Gila River in order to achieve even the most basic standards of living for its people.

B. The Petition Raises Issues Of Broad Legal Significance for Indian Tribes and for the United States In its Role as Trustee for the Tribes

While respondent United States agrees that the Arizona Supreme Court erred when it refused to consider the Apache Tribe's defense to the affirmative defense of *res judicata* based upon general principles of "comity", it nevertheless urges that the Petition does not raise matters of sufficient magnitude or precedential value to warrant this Court's review.[3] The Apache Tribe respectfully disagrees, as explained below.

1. Constitutional Protections of Due Process Mandate that Indian Tribes Be Permitted to Defend Themselves Where the Affirmative Defense of *Res Judicata* is Converted Into a "Sword" To Attack Indian Tribes' Water Rights

At its very core, the Apache Tribe's Petition rests on fundamental principles of Constitutional due process, and presents the question of whether Indian tribes are **ever** entitled to challenge the adequacy of the United States' representation, and thereby the existence of "privity" between the United States and the tribe, when confronted, in a subsequent proceeding, with the an attempt to use *res judicata* as a "sword" to eviscerate tribal property rights.

In what can only be seen as a frightening disregard of due process, the Arizona Supreme Court concluded that general principles of "comity" acted as a complete bar to any consideration of the Tribe's defense to the affirmative defense of *res judicata* raised by the Tribe's opponents in Arizona's

3. *See* U.S. Resp. at 8-16.

stream adjudication. Having refused to consider the Tribe's defense, the Arizona Supreme Court went on to rule in favor of the Tribe's opponents, holding that the United States and the Tribe were precluded by *res judicata* from asserting for the Apache Reservation any federal reserved, aboriginal, or other water rights claims to the mainstream of the Gila River, other than the nominal water rights prescribed for the Reservation in the 1935 federal consent decree known as the "*Globe Equity No. 59 Decree*" ("*Decree*").[4]

This decision leaves opponents of Indian tribes free to brandish *res judicata* as a sword to preclude proof of Indian property rights, while the tribes can say nothing in defense of their rights. In application, *res judicata* used in this manner is the functional equivalent of Arizona's historic law which, well after the entry of the *Globe Equity Decree* in 1935, prevented Indians in Arizona from testifying in court. This Court should not countenance a similar violation of due process and equal protection here.

While respondent United States insists on the one hand that the ruling of the Arizona Supreme Court presents only narrow issues, constrained to the purportedly "unique" circumstances of Arizona's stream adjudication, on the other hand, respondent candidly acknowledges the broader implications of the decision below:

> There is a serious question whether that theory [of inadequate representation] could ever apply where, as here, the United States as sovereign settled a claim for

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4. Respondent incorrectly explains that "Petitioner does not challenge the Arizona Supreme Court's ruling that the Globe Equity Decree adjudicated petitioner's rights to water from the Gila River mainstem." To the contrary, the Apache Tribe has directly challenged this ruling in its Petition, contending, *inter alia*, that the *Decree* could not have "adjudicated" the Apache Tribe's claims for federal reserved, aboriginal or other water rights to the mainstream of the Gila River because the Tribe was not party to the *Decree*, and given the United States' grossly inadequate representation of the Tribe in *Globe Equity*, the Tribe cannot be viewed as being in "privity" with the United States for purposes of *res judicata*.

> Indian water rights. Even in circumstances where reliance on a *private party's* inadequate representation would be unjustifiable, reliance on the *United States'* sovereign actions presents a different question.[5]

This, of course, goes to the very heart of the Apache Tribe's Petition.[6] Indian tribes have long been represented in legal proceedings involving their water rights, timber resources, mineral interests and other natural resources by the United States. *See Heckman v. United States*, 224 U.S. 413 (1912). Can it really be true, as the respondent United States suggests, that in these instances, tribes (unlike "private parties") are simply **never** entitled to the due process right in a subsequent action to challenge the existence of "privity" between the United States and the tribes, whether under principles of equity or pursuant to the theory of "inadequate representation" provided in *Restatement (Second) Judgments*, § 42(1)(e)?

This is a dangerous suggestion, as it would place government alienation of Indian property and resources beyond limit.[7] A simple government employee could act to deprive Indian tribes of due process, if the existence of privity between the United States and Indian tribes is assumed. This would include instances where the United States' representation of a tribe was grossly inadequate or incompetent, corrupt, or even punitive, including where the United States or its employee or representative deliberately compromised away or otherwise resolved a legal proceeding in such as manner as to leave the tribe with little or no right to certain natural resources on its reservation, or (as in the instant proceeding) without any meaningful federal reserved, aboriginal or other water rights to the most significant source of water on the tribe's reservation.

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5. *See* U.S. Resp. at 15 (italics in original).

6. *See* Issue II of the Tribe's Petition for Certiorari.

7. The alienation of Indian property has, until now, been within the plenary and exclusive power of Congress. *See, e.g., United States v. Dion*, 476 U.S. 734, 738 (1986).

In these instances, where the United States forsakes its role as trustee in favor of its own interests or the interests of others, and wholly fails to "adequately represent" its Indian "wards" in a prior proceeding, bedrock principles of due process must prevent the application of *res judicata* to the same extent due process would protect similarly situated non-Indians.[8]

Indeed, if there ever was a case in which this reasoning should be applied with full force, **that case is now before the Court**, as witnessed by the United States representation of the San Carlos Apache Tribe in *Globe Equity*.[9] The Tribe respectfully urges the Court to grant its Petition and make clear that the Constitution does not countenance the use of "comity" or general

8. Respondent is also incorrect to insist that the Apache Tribe has not contended in its Petition ". . . that the decision below is in conflict with any other decision of this Court or another appellant court." U.S. Resp. at 13. As the Apache Tribe made clear in its Petition, the ruling below conflicts with well settled principles of due process expressed by this Court in numerous rulings, including the case of *Hansberry v. Lee*, wherein this Court discussed the rule that *res judicata* generally extends no further than to the parties of the prior litigation. *See Hansberry v. Lee*, 311 U.S. 32, 40 (1940). It is axiomatic that this rule stems from the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution. *See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971); *Postal Telegraph Cable Co. v. City of Newport*, 247, U.S. 464, 476 (1918). Thus, this Court concluded in *Hansberry v. Lee*, that it violates fundamental protections of due process to bind litigants to a judgment rendered in an earlier litigation to which they were not parties, and in which they were not **adequately** represented. *See* 311 U.S. at 37.

9. In this respect, respondent's argument that the precedential significance of the Arizona Supreme Court's ruling is "limited" and unlikely to "recur frequently" is simply wrong. *See* U.S. Resp. at 8. The Court should correct here the notion that Indian tribes (unlike non-Indians) can be deprived of due process protections where the affirmative defense of *res judicata* is asserted against a tribe in a subsequent action, based upon the United States purported representation of its "wards" in an earlier proceeding. As explained more fully in the Tribe's Petition, such a wrongheaded application of general principles of *res judicata* would also deprive the Apaches of equal protection under the law.

principles of *res judicata* to trump fundamental protections of due process.

2. The Arizona Supreme Court's Application of Comity Directly Conflicts With This Court's Decisions in *Arizona v. San Carlos* and *Colorado River Water Conservation Dist. v. United States*

Respondent also contends that the Petition does not warrant this Court's review because the rulings of the Arizona Supreme Court below do not conflict with this Court's decision in *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983). Respondent is wrong.

In *Arizona v. San Carlos*, this Court, applying the rule of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 811 (1976),[10] required the United States as trustee for Arizona Indian tribes, including the Apache Tribe, to adjudicate its water rights claims in Arizona's stream adjudication, and advised that Arizona Indian tribes would be wise to intervene in the State adjudication to protect their interests. This ruling was founded upon the Court's grave concern that allowing the adjudication of Indian water rights in a **federal** forum would almost certainly result in "piecemeal litigation" which was likely to be:

> [D]uplicative and wasteful, generating 'additional litigation through permitting inconsistent dispositions of property' and that since a judgment by either court would ordinarily be res judicata in the other, the existence of such concurrent proceedings creates the serious potential for spawning an unseemly and destructive race to see which forum can resolve the same issue first – a race contrary to the entire spirit of the McCarran Amendment and prejudicial, to say the least, to the possibility of reasoned decision making by either forum.[11]

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10. *See also United States v. District Court for Eagle County*, 401 U.S. 520 (1971).

11. *Id.* at 567 (quoting *Colorado River*, 424 U.S. at 819) (internal citations omitted).

This Court also admonished, however, that Arizona had a "solemn obligation to follow federal law" in adjudicating the Tribe's water rights, and promised that ". . . any state court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought before this Court, a particularized and exacting scrutiny commensurate with the powerful federal interest in safeguarding those rights from state encroachment." *Id.* at 571. Based upon this Court's decision in *Arizona v. San Carlos*, on November 1, 1985, the United States and the Apache Tribe each filed claims for federal reserved, aboriginal, and other water rights in Arizona's stream adjudication to, *inter alia*, the Gila River mainstream, in conformance with the deadline set by the State Adjudication Court for the filing of such claims.

The decision below on "comity" directly violates this Court's ruling in *Arizona v. San Carlos* (and *Colorado River*) as it sends the Tribe back to federal court to obtain a federal decision on the question of whether or not the Tribe has additional rights to the Gila River mainstream, other than those prescribed for the United States in the *Globe Equity Decree*, thereby occasioning the very "piecemeal litigation" of Indian claims rejected by this Court in *Arizona v. San Carlos* under the McCarran Amendment, 43 U.S.C. § 666.[12] Interestingly, respondent appears to agree with this point,

12. The Arizona Supreme Court not only concluded that "comity" compelled the Tribe to return to the federal *Globe Equity Court* to raise its defense to the affirmative defense of *res judicata* (though the affirmative defense was first raised in Arizona's stream adjudication), it went on to speculate that **if** the Tribe were to present its defense to the *Globe Equity Court*, the *Globe Equity Court* would have denied the defense as untimely (App. 46a), and therefore, in deference to this perceived ruling (which never happened), the Arizona Supreme Court went on to assume the existence of privity between the United States and the Tribe in *Globe Equity*, and thus to conclude that *res judicata* precluded the United States and the Tribe from making any water rights claims to the mainstream of the Gila River in Arizona's stream adjudication, other than the annual irrigation right to 6,000 acre feet of water for 1,000 acres of land. *Id.*

at least in part, where it reasons:

> As part of that adjudication, the Arizona courts could properly resolve the question whether petitioner has a valid federal-law ground for overcoming the res judicata defense raised by other parties in this general stream adjudication. It makes little sense for the state courts to decline to consider an issue of federal law out of comity to the federal courts when the federal courts have already abstained in deference to the state courts – especially when this Court has so directed and emphasized the state courts' obligation to follow federal law.[13]

In this regard, respondent is at least partially correct. However, it not only makes "little sense" for state courts to decline on comity grounds to consider the Apache Tribe's defense to the affirmative defense of *res judicata* (as raised by the Tribe's opponents in Arizona's stream adjudication), it also directly violates this Court's express admonition against piecemeal litigation in *Arizona v. San Carlos*, as well as the due process rights of the Apache Tribe.[14] Arizona cannot undertake to perform a purportedly "comprehensive" adjudication of water

13. U.S. Resp. at 11-12.

14. Moreover, since *res judicata* is an affirmative defense and the burden remains on the party asserting *res judicata* to establish the existence of all three elements of *res judicata* if it is to be applied, requiring tribes to return to the issuing court to challenge the element of "privity", improperly shifts the burden of proof away from the party asserting the affirmative defense of *res judicata*. Furthermore, it is unclear under what standard a tribe would challenge the adequacy of the United States' representation (and thus the existence of privity) in the originating court. For example, in federal court, Rule 60(b) of the Federal Rules of Civil Procedure prescribes very different (and considerably more burdensome) legal standards to obtain relief from a judgment. Thus, a tribe seeking relief under Rule 60(b) due to the inadequate representation of the United States in the original action, would have to prove by "clear and convincing evidence" that a "fraud on the court" had been committed in the earlier action, and not simply that the element of privity between the tribe and the United States had not been proven by the party asserting *res judicata* as an affirmative defense.

rights in Arizona, which includes the federal reserved, aboriginal and other water rights claims made by and for Indian tribes, and then rely on general principles of "comity" (the virtual antithesis of this Court's ruling in *Arizona v. San Carlos*) to require Indian tribes to return to the originating court to litigate and determine **their defenses** to *res judicata*, when *res judicata* is asserted in the State adjudication as a potential bar to their water rights claims.

C. Whether the Apache Tribe Would Prevail as a Factual Matter In its Challenge to the Adequacy of the United States' Representation of the Tribe in *Globe Equity* Has Never Been Considered By Any Court In a Trial On the Merits

Relying on quotes taken from a handful of documents selected from the many thousands of pages of reports, letters, memoranda, government materials and other historical documents on the history of the Apache Tribe, respondent urges "as a factual matter" that there is a "substantial question" whether the Tribe would prevail, even if this Court were to reverse the Arizona Supreme Court's decision on comity.[15] Respondent is wrong for several reasons.

First, as discussed in the Tribe's Response in Opposition to the Conditional Cross-Petition filed by Phelps Dodge,[16] the Tribe has never been given an opportunity to prove in a trial on the merits the facts giving rise to its defense against *res judicata*. If it had, it would have proven that the United States so grossly and inadequately represented the Tribe in *Globe Equity*, as to destroy any vestige of privity between the United States and the Tribe, and to provide clear notice to the opposing parties of this fact, creating no legitimate claim of justifiable reliance by them *vis-a-vis* the water rights claims for the Apache Tribe.[17] Respondent's recitation of select "facts" here simply repeats

15. U.S. Resp. at 15-16.

16. *See* Apache Tribe's Response In Opposition to Phelps Dodge's Condition Cross-Petition at 10-13.

17. The United States previously agreed in its Opening Brief before (Cont'd)

many of the facts disputed by the Tribe below – "facts" which are outweighed by the weight of historical documents and which have not been proven in a trial on the merits.

Moreover, the grossly inadequate conduct of the Secretary need not be proven by resort to historical documents (though it can be), because it is apparent on the face of the *Decree*. For 1,500,000 acres of Reservation lands in the Gila River drainage, the United States pressed for and secured a mere fraction of the water rights to which the Tribe was entitled under *Winters v. United States*, 207 U.S. 564, 565 (1908), and then included a provision in the *Globe Equity Decree* for the **sale** of this remaining right to non-Indian farmers in the Upper Valleys for the benefit of SCIP,[18] which would have left the Tribe without a single drop of water from the Gila River mainstream. Respondent is simply wrong to asserts that the Tribe is unlikely to prevail if given an opportunity to prove its defense to the application of *res judicata*.[19] This Court has promised to review "with particularized and exacting scrutiny" any state court decision alleged to abridge Indian water rights protected by federal law. *See Arizona v. San Carlos*, 463 U.S. at 561. It should do so here.

CONCLUSION

The San Carlos Apache Tribe respectfully requests that this Court grant its Petition and issue a writ of certiorari as to Issue 1 and Issue 2 to the Arizona Supreme Court on the decision below.

(Cont'd)

the Arizona Supreme Court that the Tribe is entitled to a trial on the merits regarding its inadequate representation defense. *See* U.S.-Opening-Resp. at 81.

18. *See* Article VI(2), *Decree*, Apache Tribe Supplemental Appendix to Petition for Certiorari, No. 06-173 ("Supp. App") at 198.

19. Respondent also briefly argues that this Court's rulings in *Nevada v. United States*, 463 U.S. 110 (1983) and/or *Arizona v. California*, 460 U.S. 626 (1983) might apply to preclude Petitioner's defense of inadequate representation as a matter of law. However, both of these cases are factually and legally distinguishable from this case. Because this point is more fully addressed in the Apache Tribe's Consolidated Reply to the Responses in Opposition filed by Phelps Dodge Corporation, the City of Safford, and the Gila Valley Irrigation District, the Tribe does not duplicate its argument on the topic here.

Respectfully submitted,

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